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AN INTERDISCIPLINARY REVIEW

Murray N. Rothbard
Origins of the Welfare State in America

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Libertarian Literature Review

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ORIGINS OF THE WELFARE STATE IN AMERICA

Murray N. Rothbard*

Standard theory views government as functional: a social need arises, and government, semi-automatically, springs up to fill that need. The analogy rests on the market economy: demand gives rise to supply (e.g., a demand for cream cheese will result in a supply of cream cheese on the market). But surely it is strained to say that, in the same way, a demand for postal services will spontaneously give rise to a government-monopoly Post Office, outlawing its competition and giving us ever-poorer service for ever-higher prices.

Indeed, if the analogy fails when even a genuine service (e.g., mail delivery or road construction) is being provided, imagine how much worse the analogy is when government is not supplying a good or service at all, but is coercively redistributing income and wealth.

When the government, in short, takes money at gun point from A and gives it to B, *who* is demanding *what*? The cream-cheese producer on the market is using his resources to supply a genuine demand for cream cheese; he is not engaged in coercive redistribution. But what about the government's taking from A and giving the money to B? Who are the demanders, and who are the suppliers? One can say that the subsidized, the "donees," are "demanding" this redistribution; surely, however, it would be straining credulity to claim that A, the fleeced, is also "demanding" this activity. A, in fact, is the reluctant supplier, the coerced donor; B is gaining at A's expense. But the really interesting role here is played by G, the government. For apart from the unlikely case where G is an unpaid altruist, performing this action as an uncompensated Robin Hood, G gets a rake-off, a handling charge, a finder's fee, so to speak, for this little transaction. G, the government, in other words, performs his act of "redistribution" by fleecing A for the benefit of B and of himself.

Once we focus on this aspect of the transaction, we begin to realize that G, the government, might not just be a passive recipient of B's felt need and economic demand, as standard theory

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would have it; instead, G himself might be an active demander and, as a full-time, paid Robin Hood, might even have stimulated B's demand in the first place, so as to be in on the deal. The felt need, then, might be on the part of the governmental Robin Hood himself.

WHY THE WELFARE STATE?

Why has government increased greatly over this century? Specifically, why has the welfare state appeared, grown, and become ever-larger and more powerful? What was the functional need felt here? One answer is that the development of poverty over the past century gave rise to welfare and redistribution. But this makes little sense, since it is evident that the average person's standard of living has grown considerably over the past century-and-a-half, and poverty has greatly diminished.

But perhaps inequality has been aggravated, and the masses, even though better off, are upset by the increased income gap between themselves and the wealthy? English translation: the masses may be smitten with envy and rankle furiously at a growing income disparity. But it should also be evident from one glance at the Third World that the disparity of income and wealth between the rich and the masses is far greater there than in Western capitalist countries. So what's the problem?

Another standard answer more plausibly asserts that industrialization and urbanization, by the late 19th century, deprived the masses, uprooted from the soil or the small town, of their sense of community, belonging, and mutual aid.[1] Alienated and deracinated in the city and in the factory, the masses reached out for the welfare state to take the place of their old community.

Certainly it is true that the welfare state emerged during the same period as industrialization and urbanization, but coincidence does not establish causation.

One grave flaw in this urbanization theory is that it ignores the actual nature of the city, at least as it had been before it was effectively destroyed in the decades after World War II. The city was not a monolithic agglomeration but a series of local neighborhoods, each with its own distinctive character, network of clubs, fraternal associations, and street corner hangouts. Jane Jacobs's memorable depiction of the urban neighborhood in her *Death and Life of Great American Cities* was a charming and accurate portrayal of the unity in diversity of each neighborhood,

[1]Harold Wilensky put it baldly and succinctly: "Economic growth is the ultimate cause of welfare state development." Harold Wilensky, *The Welfare State and Equality* (Berkeley: University of California Press, 1975), p. 24.

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of the benign role of the "street watcher" and the local storekeeper. Large city life in the United States by 1900 was almost exclusively Catholic and ethnic, and both the political and social life of Catholic males in each neighborhood revolved, and still, to an extent, revolves, around the neighborhood saloon. There the men of the neighborhood would repair each evening to the saloon, where they would drink a few beers, socialize, and discuss politics. Typically, they would receive political instruction from the local saloon keeper, who was generally also the local Democratic ward heeler. Wives socialized separately, and at home. The beloved community was still alive and well in urban America.

On deeper historical inquiry, moreover, this seemingly plausible industrialism explanation falls apart, and not only on the familiar problem of American exceptionalism, the fact that the United States, despite industrializing more rapidly, lagged behind European countries in developing the welfare state. Detailed investigations of a number of industrialized countries, for example, find no correlation whatsoever between the degree of industrialization and the adoption of social insurance programs between the 1880s and the 1920s or the 1960s.[2]

More strikingly, the same findings hold true *within* the United States, where American exceptionalism can play no role. The earliest massive social welfare program in the United States was the dispensing of post–Civil War pensions to aging veterans of the Union Army and their dependents. Yet, these post–Civil War pensions were more likely to aid farmers and small townsmen than residents of large industrial cities. County-level post-Civil War pension studies in Ohio in the late 1880s, the peak years for these pension payments, demonstrate a negative correlation between the degree of urbanism, or percentage of people living in homes rather than on farms, and the rates of receipt of pensions. The author of the study concluded that "generally, pensions were distributed to predominantly rural, Anglo-Saxon areas," while the major city of Cleveland had the lowest per capita rate of receipt of pensions.[3] Furthermore, pioneers in

[2]Thus, Flora and Alber find no correlation between levels of industrialization and social insurance programs of 12 European nations between the 1880s and the 1920s. Peter Flora and Jens Alber, "Modernization, Democratization, and the Development of Welfare States in Western Europe," in Peter Flora and Arnold Heidenheimer, eds., *The Development of Welfare States in Europe and American* (New Brunswick, N.J.: Transaction Press, 1981), pp. 37–80. Likewise, Collier and Messick find no relation between industrialization and the adoption of social insurance programs in 59 nations between the 1880s and the 1960s. David Collier and Richard Messick, "Prerequisites versus Diffusion: Testing Alternative Explanations of Social Security Adoption," *American Political Science Review* 69 (1975): 1299–315. Cited in Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1992), pp. 559–60.

[3]Heywood Sanders, "Paying for the 'Bloody Shirt': The Politics of Civil War Pensions," in *Political Benefits*, Barry Rundquist, ed. (Lexington, Mass.: D.C. Heath, 1980), pp. 150–54.

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unemployment insurance and other social legislation were often the less-industrialized and more-rural states, such as Wisconsin, Minnesota, Oklahoma, and Washington state.[4]

Another standard view, the left-liberal or "social-democratic model," as its practitioners call it, holds that the welfare state came about not through the semi-automatic functioning of industrialization, but rather through conscious mass movements from below, movements generated by the demands of the presumptive beneficiaries of the welfare state themselves: the poor, the masses, or the oppressed working class. This thesis has been summed up boldly by one of its adherents. Everywhere, he says, the welfare state has been the product of

> a highly centralized trade union movement with a classwide membership base, operating in close coordination with a unified reformist–socialist party which, primarily on the basis of massive working class support, is able to achieve hegemonic status in the party system.[5]

Certainly, much of this thesis is overdrawn even for Europe, where much of the welfare state was brought about by conservative and liberal bureaucrats and political parties, rather than by unions or socialist parties. But setting that aside and concentrating on the United States, there has been, for one thing, no massively supported socialist party, let along one which has managed to achieve "hegemonic status."

We are left, then, with labor unions as the only possible support for the social-democratic model for the United States. But here, historians, almost uniformly starry-eyed supporters of labor unions, have wildly exaggerated the importance of unions in American history. When we get past romantic stories of strikes and industrial conflicts (in which the union role is inevitably whitewashed if not glorified), even the best economic historians don't bother informing the reader of the meager quantitative role or importance of unions in the American economy. Indeed, until the New Deal, and with the exception of brief periods when unionization was coercively imposed by the federal government (during World War I, and in the railroads during the 1920s), the percentage of union members in the labor force

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[4]Edwin Amenta, Elisabeth Clemens, Jefren Olsen, Sunita Parikh, and Theda Skocpol, "The Political Origins of Unemployment Insurance in Five American States," *Studies in American Political Development* 2 (1987): 137–82; Richard M. Vallely, *Radicalism in the States: the Minnesota Farmer-Labor Party and the American Political Economy* (Chicago: University of Chicago Press, 1989); and Skocpol, *Protecting Soldiers*, pp. 560–61.

[5]Michael Shalev, "The Social Democratic Model and Beyond: Two Generations of Comparative Research on the Welfare State," *Comparative Social Research* 6 (1983): 321. A similar sentiment is: "the welfare state is a product of the growing strength of labour in civil society." John Stephens, *The Transition from Capitalism to Socialism* (London: Macmillan, 1979), p. 89.

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typically ranged from a minuscule 1 to 2 percent during recessions, up to 5 or 6 percent during inflationary booms, and then down to the negligible figure in the next recession.[6]

Furthermore, in boom or bust, labor unions, in the free-market environment, were only able to take hold in specific occupations and areas of the economy. Specifically, unions could only flourish as skilled-craft unions (a) which could control the supply of labor in the occupation because of the small number of workers involved; (b) where this limited number constituted a small fraction of the employer's payroll; and (c) where, because of technological factors, the industry in question was not very actively competitive across geographical regions. One way to sum up these factors is to say, in economists' jargon, that the employers' demand schedule for this type of labor is inelastic, that is, that a small restriction in the supply of such labor could give rise to a large wage increase for the remaining workers. Labor unions could flourish, moreover, in such geographically uncompetitive industries as anthracite coal, which is found in only a small area of northeastern Pennsylvania; and the various building trades (carpenters, masons, electricians, joiners, etc.), since building construction in, say, New York City, is only remotely competitive with similar construction in Chicago or Duluth. In contrast, despite determined efforts, it was impossible for unions to prosper in such industries as bituminous coal, which is found in large areas of the U.S., or clothing manufacture, where factories can move readily to another, non-unionized area.

It was a shrewd understanding of these principles that enabled Samuel Gompers and the craft unions in his American Federation of Labor to flourish, while other, more radical and socialistic unions, such as The Noble Order of the Knights of Labor, collapsed quickly and faded from the scene.[7]

It should be obvious, then, that the advent and growth of the welfare state in the United States had little or nothing to do with the growth of the labor movement. On the contrary, the

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[6]The percentage of union membership to the American population, aged 15–64, amounted to only 1.35 in 1871, 0.7% in 1880, and, after the development of the AFL and the modern labor movement in 1886, totaled 1.0% in 1890 and 1.9% in 1900. Lloyd Ulman, *The Rise of the National Trade Union* (Cambridge, Mass.: Harvard University Press, 1955). The best works on trade union memberships in this period are still Leo Wolman, *The Growth of American Trade Unions, 1880–1923* (New York: National Bureau of Economic Research, 1924), and Leo Wolman, *Ebb and Flow in Trade Unionism* (New York: National Bureau of Economic Research, 1936).

[7]For the classic exposition of Gompersian unionism by an economist and student of John R. Commons, the Wisconsin institutional economist who was virtually Gompers's theoretician, see Selig Perlman, *A Theory of the Labor Movement* (New York: Augustus M. Kelley, 1949); also see the companion volume by Perlman, *A History of Trade Unionism in the United States* (New York: Macmillan, 1922).

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growth of labor unionism in America—during World War I and during the 1930s, its two great spurts of activity—were brought about by governmental coercion from above. Labor unions, then, were an effect rather than a cause of the welfare state, at least in the United States.

YANKEE POSTMILLENNIAL PIETISM

If it wasn't industrialism or mass movements of the working class that brought the welfare state to America, what was it? Where are we to look for the causal forces? In the first place, we must realize that the two most powerful motivations in human history have always been ideology (including religious doctrine), and economic interest, and that a joining of these two motivations can be downright irresistible. It was these two forces that joined powerfully together to bring about the welfare state.

Ideology was propelled by an intensely held religious doctrine that swept over and controlled virtually all Protestant churches, especially in "Yankee" areas of the North, from 1830 on. Likewise, a growing corollary ideology of statism and corporate socialism spread among intellectuals and ministers by the end of the 19th century. Among the economic interests promoted by the burgeoning welfare state were two in particular. One was a growing legion of educated (and often overeducated) intellectuals, technocrats, and the "helping professions" who sought power, prestige, subsidies, contracts, cushy jobs from the welfare state, and restrictions of entry into their field via forms of licensing. The second was groups of big businessmen who, after failing to achieve monopoly power on the free market, turned to government—local, state, and federal—to gain it for them. The government would provide subsidies, contracts, and, particularly, enforced cartelization. After 1900, these two groups coalesced, combining two crucial elements: wealth and opinion-molding power, the latter no longer hampered by the resistance of a Democratic Party committed to laissez-faire ideology. The new coalition joined together to create and accelerate a welfare state in America. Not only was this true in 1900, it remains true today.

Perhaps the most fateful of the events giving rise to and shaping the welfare state was the transformation of American Protestantism that took place in a remarkably brief period during the late 1820s. Riding in on a wave from Europe, fueled by an intense emotionalism often generated by revival meetings, this Second Great Awakening conquered and remolded the Protestant churches, leaving such older forms as Calvinism far behind. The new Protestantism was spearheaded by the emotionalism of revival meetings held throughout the country by

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the Rev. Charles Grandison Finney. This new Protestantism was pietist, scorning liturgy as papist or formalistic, and equally scornful of the formalisms of Calvinist creed or church organization. Hence, denominationalism, God's Law, and church organization were no longer important. What counted was each person's achieving salvation by his own free will, by being "born again," or being "baptized in the Holy Spirit." An emotional, vaguely defined pietist, non-creeded, and ecumenical Protestantism was to replace strict creedal or liturgical categories.

The new pietism took different forms in various regions of the country. In the South, it became personalist, or salvational; the emphasis was on each person's achieving this rebirth of salvation on his own, rather than via social or political action. In the North, especially in Yankee areas, the form of the new Protestantism was very different. It was aggressively evangelical and postmillennialist, that is, it became each believer's sacred duty to devote his energies to trying to establish a Kingdom of God on Earth, to establishing the perfect society in America and eventually the world, to stamp out sin and "make America holy," as essential preparation for the eventual Second Advent of Jesus Christ. Each believer's duty went far beyond mere support of missionary activity, for a crucial part of the new doctrine held that he who did not try his very best to maximize the salvation of others would not himself be saved. After only a few years of agitation, it was clear to these new Protestants that the Kingdom of God on Earth could only be established by government, which was required to bolster the salvation of individuals by stamping out occasions for sin. While the list of sins was unusually extensive, the PMPs (postmillennial pietists) stressed in particular the suppression of Demon Rum, which clouds men's minds to prevent them from achieving salvation; slavery, which prevented the enslaved from achieving such salvation; any activities on the Sabbath except praying or reading the Bible; and any activities of the Anti-Christ in the Vatican, the Pope of Rome and his conscious and dedicated agents who constituted the Catholic Church.

The Yankees who particularly embraced this view were an ethno-cultural group descending from the original Puritans of Massachusetts, and who, beginning in rural New England, moved westward and settled upstate New York ("the Burned-Over District"), northern Ohio, northern Indiana, northern Illinois, and neighboring areas. As early as the Puritan days, the Yankees were eager to coerce themselves and their neighbors; the first American public schools were set up in New England to inculcate obedience and civic virtue in their charges.[8]

[8]Those two great ideological and political opponents of the late 1880s and early 1890s, Grover Cleveland and Benjamin Harrison, embodied this battle within the Presbyterian Church. Cleveland, an old-fashioned Calvinist Presbyterian

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The concentration of the new statists in Yankee areas was nothing short of remarkable. From the Rev. Finney on down to virtually all the Progressive intellectuals who would set the course of America in the years after 1900, they were, almost to a man, born in Yankee areas: rural New England and their migrant descendants in upstate and western New York, northeastern Ohio (the "Western Reserve," originally owned by Connecticut and settled early by Connecticut Yankees), and the northern reaches of Indiana and Illinois. Almost to a man, they were raised in very strict Sabbatarian homes, and often their father was a lay preacher and their mother the daughter of a preacher.[9] It is very likely that the propensity of the Yankees, in particular, to take so quickly to the coercive, crusading aspect of the new Protestant pietism was a heritage of the values, mores, and world outlook of their Puritan ancestors, and of the community they had established in New England. Indeed, we have in recent years been strikingly reminded of the three very different and clashing groups, all Protestants, who came from very different regions of Great Britain, and who settled in different regions of North America: the coercive, community-oriented Puritans from East Anglia who settled in New England; the manor-and-plantation-oriented Anglian Cavaliers who came from Wessex and settled in the Tidewater South; and the feisty, individualistic Presbyterian Borderers who came from the border country in northern England and southern Scotland and who settled in the Southern and Western back country.[10]

The Rev. Charles Grandison Finney, who essentially launched the pietist sweep, was virtually a paradigmatic Yankee. He was born in Connecticut; at an early age, his father joined the emigration by taking his family to a western New York farm, on the Ontario frontier. In 1812, fully 2/3 of the 200,000 people living in western New York had been born in New England. While a nominal Presbyterian, in 1821 at the age of 29, Finney converted to the new pietism, experiencing his

from Buffalo, was the son of a Calvinist clergyman, a Democrat, a "wet" on liquor, and a personal *bon vivant*; the prim, dour Harrison was a pietist Presbyterian from Indiana, and a Republican. See Richard Jensen, *The Winning of the Midwest: Social and Political Conflict, 1888–1896* (Chicago: University of Chicago Press, 1971), pp. 79–80.

[9]Rural, because urban New England centers such as Boston had gone Unitarian during the 18th century. The Unitarians, on the other hand, were allied to the PMPs in advocating a more secular version of the coercive Utopian Kingdom to be achieved by government. On Unitarianism, Calvinism, and the Kingdom of God on Earth, especially as it dominated the public school movement in the 19th century, see the important but neglected work by Rousas John Rushdoony, *The Messianic Character of American Education: Studies in the History of the Philosophy of Education* (Nutley, N.J.: Craig Press, 1979), pp. 18–32, 40–48.

[10]See the massive and fascinating work by David Hackett Fischer, *Albion's Seed: Four British Folkways in America* (New York: Oxford University Press, 1989). Whether or not these Borderers, or Scotch-Irish, are Celtic is controversial, with Fischer denying it, and most other authorities, notably Grady McWhiney and Forrest McDonald, maintaining this thesis.

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second baptism, his "baptism of the Holy Spirit," his conversion being greatly aided by the fact that he was self-educated in religion, and lacked any religious training. Tossing aside the Calvinist tradition of scholarship in the Bible, Finney was able to carve out his new religion, and to ordain himself in his new version of the faith. Launching his remarkably successful revival movement in 1826 when he was an attorney in northeastern Ohio, his new pietism swept the Yankee areas in the East and midwest. Finney wound up at Oberlin College, in the Western Reserve area of Ohio, where he became president, and transformed Oberlin into the preeminent national center for the education and dissemination of postmillennial pietism.[11]

The pietists quickly took to statist paternalism at the local and state level: to try to stamp out Demon Rum, Sabbath activity, dancing, gambling, and other forms of enjoyment, as well as trying to outlaw or cripple Catholic parochial schools, and expanding public schools as a device to Protestantize Catholic children, or, in the common phrase of the later 19th century, to "Christianize the Catholics." But use of the national government came early as well: to try to restrict Catholic immigration, in response to the Irish Catholic influx of the late 1840s; to restrict or abolish slavery; or to eliminate the sin of mail delivery on Sunday. It was therefore easy for the new pietists to expand their consciousness to favor paternalism in national economic affairs. Using big government to create a perfect economy seemed to parallel employing such government to stamp out sin and create a perfect society. Early on, the PMPs advocated government intervention to aid business interests and to protect American industry from the competition of foreign imports. In addition, they tended to advocate public works, and government creation of mass purchasing power through paper money and central banking. The PMPs therefore quickly gravitated toward the statist Whig Party, and then to the vehemently anti-Catholic America (or "Know Nothing") Party, finally culminating in all-out support for the Republican Party, the "party of great moral ideas."[12]

On the other hand, all religious groups that did not want to be subjected to the PMP theocracy—Catholics, High Church (or liturgical) German Lutherans, old-fashioned Calvinists, secular-

[11]On Finney and the revival movement, see Bernard A. Weisberger, *They Gathered at the River: The Story of the Great Revivalists and their Impact Upon Religion in America* (Boston: Little, Brown, 1958). Also see the classic work by Whitney R. Cross, *The Burned-Over District: The Social and Intellectual History of Enthusiastic Religion in Western New York, 1800–1850* (New York: Harper Torchbooks, 1950).

[12]On the enormous, but neglected, importance of anti-Catholicism and the co-opting of Know Nothings in the Republican rise to major party status, see William E. Gienapp, "Nativism and the Creation of a Republican Majority in the North before the Civil War," *Journal of American History* 72 (December 1985): 529–59.

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ists, and Southern personal salvationists—naturally gravitated toward the laissez-faire political party, the Democrats. Becoming known as the "party of personal liberty," the Democrats championed small government and laissez faire on the national economic level as well, including separation of government and business, free trade, and hard money, which included the separation of government from the banking system.

The Democrat Party had been the champion of laissez faire, minimal government, and decentralization from the time of its inception until its takeover by the ultra-pietist Bryanite forces in 1896. After 1830, the laissez-faire Democratic constituency was greatly strengthened by an influx of religious groups opposed to Yankee theocracy.

If postmillennial Protestantism provided a crucial impetus toward State dictation over society and the economy, another vital force on behalf of the partnership of government and industry was the zeal businessmen and industrialists eager to jump on the bandwagon of state privilege. Vital to the Republican coalition, then, were the big railroads, dependent on government subvention and heavily in debt, and the Pennsylvania iron and steel industry, almost chronically inefficient and in perpetual need of high tariffs to protect them from import competition. When industrialists, as was often the case, were at one and the same time Yankee postmillennial pietists seeking to impose a perfect society, and also inefficient industrialists seeking government aid, the fusion of religious doctrine and economic interest became a powerful force in guiding their actions.

YANKEE WOMEN: THE DRIVING FORCE

Of all the Yankee activists in behalf of statist "reform," perhaps the most formidable force was the legion of Yankee women, in particular those of middle- or upper-class background, and especially spinsters whose busybody inclinations were not fettered by the responsibilities of home and hearth. One of the PMPs' favorite reforms was to bring about women's suffrage, which was accomplished in various states and localities long before a constitutional amendment imposed it on the entire country. One major reason: it was obvious to everyone that, given the chance to vote, most Yankee women would be quick to troop to the ballot-box, whereas Catholic women believed their place to be at home and with the family, and would not bother about political considerations. Hence, women's suffrage was a way of weighting the total vote toward the postmillennialists and away from the Catholics and High Church Lutherans.

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The impact of the revivalist transformation of Protestantism in the 1820s and 1830s upon female activism is well described by the feminist historian Carroll Smith-Rosenberg:

> Women's religious movements multiplied. Female revival converts formed Holy Bands to assist the evangelist in his revival efforts. They gathered with him at dawn to help plan the day's revival strategies. They posted bills in public places urging attendance at revival meetings, pressured merchants to close their shops and hold prayer services, and buttonholed sinful men and prayed with them. Although "merely women," they led prayer vigils in their homes that extended far into the night. These women for the most part were married, respected members of respectable communities. Yet, transformed by millennial zeal, they disregarded virtually every restraint upon women's behavior. They self-righteously commanded sacred space as their own. They boldly carried Christ's message to the streets, even into the new urban slums.[13]

The early suffragette leaders began as ardent prohibitionists, the major political concern of the postmillennial Protestants. They were all Yankees, centering their early activities in the Yankee heartland of upstate New York. Thus, Susan Brownell Anthony, born in Massachusetts, was the founder of the first women's temperance (prohibitionist) society, in upstate New York in 1852. Susan B. Anthony's co-leader in generating suffragette and prohibitionist women's activities, Elizabeth Cady Stanton, came from Johnston, New York, in the heart of the Yankee Burned-Over District. Organized prohibitionism began to flourish in the winter of 1873–74, when spontaneous "Women's Crusades" surged into the streets, dedicated to direct action to closing down the saloons. Beginning in Ohio, thousands of women took part in such actions during that winter. After the spontaneous violence died down, the women organized the Women's Christian Temperance Union (WCTU) in Fredonia (near Buffalo), New York, in the summer of 1874. Spreading like wildfire, the WCTU became the outstanding force for decades on behalf of the outlawry of liquor.

What is less well known is that the WCTU was not a one-issue organization. By the 1880s, the WCTU was pushing, throughout states and localities, for a comprehensive statist program for government intervention and social welfare. These measures included the outlawing of licensed brothels and red-light districts, imposition of a maximum 8-hour working day, the establishment of government facilities for neglected and dependent children, government shelters for children of working

[13]Carroll Smith-Rosenberg, *Disorderly Conduct* (New York: Alfred A. Knopf, 1985), pp. 85–86.

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mothers, government recreation facilities for the urban poor, federal aid to education, mothers' education by government, and government vocational training for women. In addition, the WCTU pushed for the new kindergarten movement, which sought to lower the age when children began to come under the purview of teachers and other educational professionals.[14]

PROGRESSIVES AND THE GRADUAL SECULARIZATION OF POSTMILLENNIAL PIETISM: ELY, DEWEY, AND COMMONS

A critical but largely untold story in American political history is the gradual but inexorable secularization of Protestant postmillennial pietism over the decades of the middle and late 19th century.[15] The emphasis, almost from the beginning, was to use government to stamp out sin and to create a perfect society, in order to usher in the Kingdom of God on Earth. Over the decades, the emphasis slowly but surely shifted: more and more away from Christ and religion, which became ever-vaguer and woollier, and more and more toward a Social Gospel, with government correcting, organizing, and eventually planning the perfect society. From paternalistic mender of social problems, government became more and more divinized, more and more seen as the leader and molder of the organic social whole. In short, Whigs, Know-Nothings, and Republicans were increasingly becoming Progressives, who were to dominate the polity and the culture after 1900; a few of the more radical thinkers were openly socialist, with the rest content to be organic statists and collectivists. And as Marxism became increasingly popular in Europe after the 1880s, the progressives prided themselves on being organic statist middle-of-the-roaders between old-fashioned dog-eat-dog laissez-faire individualism on the one hand, and proletarian socialism on the other. Instead, the progressive would provide to society a Third Way in which Big Government, in the service of the joint truths of science and religion, would harmonize all classes into one organic whole.

By the 1880s, the focus of postmillennial Christian endeavor began to shift from Oberlin College to the liberal "New Theology" at Andover Theological Seminary in Massachusetts. The

[14]See Ruth Bordin, *Woman and Temperance: the Quest for Power and Liberty, 1873–1900* (Philadelphia: Temple University Press, 1981). On the postmillenialists and women suffrage, see the excellent work by Alan P. Grimes, *The Puritan Ethic and Woman Suffrage* (New York: Oxford University Press, 1967).

[15]But see the illuminating article by Jean B. Quandt, "Religion and Social Thought: The Secularizing of Postmillenialism," *American Quarterly* 25 (October 1973): 390–409. Also see James H. Moorhead, "The Erosion of Postmillennialism in American Religious Thought, 1865–1925," *Church History* 53 (March 1984): 61–77.

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Andover liberals, as Jean Quandt points out, stressed "the immanence of God in nature and society, a concept derived in part from the doctrine of evolution." Furthermore, "Christian conversion . . . came more and more to mean the gradual moral improvement of the individual." Thus, says Quandt, "Andover's identification of God with all the regenerating and civilizing forces in society, together with its Arminian emphasis on man's moral achievements, pointed toward an increasingly secular version of America's transfiguration."[16] Professor Quandt sums up the gradual but fateful change as a change that amounted to "a secularization of the eschatological vision." As Quandt writes:

> The outpourings of the Holy Spirit which were to usher in the kingdom of the 1850s were replaced, in the Gilded Age and the Progressive Era, by advances in knowledge, culture, and ethical Christianity. Whereas evangelical Protestantism had insisted that the kingdom would come by the grace of God acting in history and not by any natural process, the later version often substituted the providential gift of science for redeeming grace. These changes toward a more naturalistic view of the world's progress were paralleled by a changing attitude toward the agencies of redemption. The churches and the benevolent societies connected with them were still considered important instruments of the coming kingdom, but great significance was now attached to such impersonal messianic agencies as the natural and social sciences. The spirit of love and brotherhood . . . was (now) often regarded as an achievement of human evolution with only tenuous ties to a transcendent deity.[17]

Progressive intellectuals and social and political leaders reached their apogee in a glittering cohort which, remarkably, were almost all born in precisely the year 1860, or right around it.[18]

Richard T. Ely was born on a farm in western New York, near Fredonia, in the Buffalo area.[19] His father, Ezra, a descendant of Puritan refugees from Restoration England, came from a long line of Congregationalist and Presbyterian clergy. Ezra, who had come from rural Connecticut, was a farmer whose poor soil was suited only to grow barley; yet, as an ardent prohibitionist, he refused to give his sanction to barley, since its

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[16]Quandt, "Secularization," p. 394.

[17]Quandt, "Secularization," p. 396.

[18]See the impressive list of the 1860 and environs cohort of Progressives in Robert M. Crunden, *Ministers of Reform: The Progressives Achievement in American Civilization, 1889–1920* (New York: Basic Books, 1982), pp. 275–76.

[19]For a biography of Ely, see Benjamin G. Rader, *The Academic Mind and Reform: the Influence of Richard T. Ely on American Life* (Lexington: University of Kentucky Press, 1966).

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main consumer product was beer. Highly intense about religion, Ezra was an extreme Sabbatarian who prohibited games or books (except the Bible) upon the Sabbath, and hated tobacco as well as liquor.

Richard was highly religious but not as focused as his father; he grew up mortified at not having had a conversion experience. He learned early to get along with wealthy benefactors, borrowing a substantial amount of money from his wealthy Columbia classmate, Edwin R.A. Seligman, of the New York investment-banking family. Graduating from Columbia in 1876, in a country where there was not yet a Ph.D. program, Ely joined most of the economists, historians, philosophers, and social scientists of his generation in traveling to Germany, the land of the Ph.D., for his doctorate. As in the case of his fellows, Ely was enchanted with the third way or organic statism that he and the others thought they found in Hegel and in German social doctrine. As luck would have it, Ely, on his return from Germany with a Ph.D. at the young age of 28, became the first instructor in political economy at America's first graduate university, Johns Hopkins. There, Ely taught and found disciples in a glittering array of budding statist economists, social scientists, and historians, some of whom were barely older than he was, including Chicago sociologist and economist Albion W. Small (b. 1854), Chicago economist Edward W. Bemis, economist and sociologist Edward Alsworth Ross, City College of New York president John H. Finlay, Wisconsin historian Frederick Jackson Turner, and future president Woodrow Wilson.

During the 1880s, Ely, like so many postmillennial pietists remarkably energetic, founded the American Economic Association and ran it with an iron hand for several years; he also founded, and became the first president of, the Institute for Christian Sociology, which pledged "to present . . . (God's) kingdom as the complete ideal of human society to be realized on earth." Ely also virtually took over the summer evangelical Chautauqua movement, and his textbook, *Introduction to Political Economy*, because a best-seller, largely by being distributed through, and becoming required reading for, the Chautauqua Literary and Scientific Circle, for literally a half-century. In 1891, Ely founded the Christian Social Union of the Protestant Episcopal Church, along with the avowedly socialist Rev. William Dwight Porter Bliss, who was the founder of the Society of Christian Socialists. Ely was also enamored of the socialist One Big Union Knights of Labor, which he hailed as "truly scientific" and lauded in his book *The Labor Movement* (1886); the Knights, however, collapsed abruptly after 1887.

Discouraged about not getting a full professorship at Hopkins, Ely, moving through his old student Frederick Jackson

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Turner, who was teaching at Wisconsin, managed to land not only a professorship at that university in 1892, but also became director, with the highest salary on campus, of a new institute, a School of Economics, Political Science, and History. A gifted academic empire-builder, he managed to acquire funding for an assistant professor, a graduate fellow, and a large library at his institute.

Ely brought his favorite former students to Wisconsin, and Ely and his former and later students became the key advisors to the administration of Robert M. La Follette (b. 1855), who became the Progressive governor of Wisconsin in 1900. Through La Follette, Ely and the others pioneered welfare-state programs on a state level. Significantly, La Follette had gotten his start in Wisconsin politics as an ardent prohibitionist.

The key to Ely's thought was that he virtually divinized the State. "God," he declared, "works through the State in carrying out His purposes more universally than through any other institution."[20] Once again, Professor Quandt sums up Ely best:

> In Ely's eyes, government was the God-given instrument through which we had to work. Its preeminence as a divine instrument was based on the post-Reformation abolition of the division between the sacred and the secular and on the State's power to implement ethical solutions to public problems. The same identification of sacred and secular . . . enabled Ely to both divinize the state and socialize Christianity: he thought of government as God's main instrument of redemption.[21]

It must not be thought that Ely's vision was totally secular. On the contrary, the Kingdom was never far from his thoughts. It was the task of the social sciences to "teach the complexities of the Christian duty of brotherhood." Through such instruments as the industrial revolution, the universities, and the churches, through the fusion of religion and social science, there will arrive, Ely believed, "the New Jerusalem" "which we are all eagerly awaiting." And then, "the earth [will become] a new earth, and all its cities, cities of God." And that Kingdom, according to Ely, was approaching rapidly.

A striking example of the secularization of a postmillennial-progressive leader is the famed founder of pragmatist philosophy and progressive education, the prophet of atheistic higher Democracy, philosopher John Dewey (b. 1859). It is little known that in an early stage of his seemingly endless career, Dewey was an ardent preacher of postmillennialism and the

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[20]Sidney Fine, *Laissez Faire Thought and the General-Welfare State: A Study of Conflict in American Thought, 1865–1901* (Ann Arbor: University of Michigan Press, 1956), p. 180.

[21]Quandt, "Secularization," p. 403.

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coming of the Kingdom. Addressing the Students' Christian Association at Michigan, Dewey argued that the Biblical notion of the Kingdom of God come to earth was a valuable truth which had been lost to the world, but now, the growth of modern science and the communication of knowledge has made the world ripe for the temporal realization of "the Kingdom of God . . . the common incarnate Life, the purpose . . . animating all men and binding them together into one harmonious whole of sympathy." Science and democracy, exhorted Dewey, marching together, reconstruct religious truth; and with this new truth, religion could help bring about "the spiritual unification of humanity, the realization of the brotherhood of man, all that Christ called the Kingdom of God . . . on earth."

For Dewey, democracy was "a spiritual fact." Indeed, it is the "means by which the revelation of truth is carried on." It was only in democracy, asserted Dewey, that "the community of ideas and interest through community of action, that the incarnation of God in man (man, that is to say, as an organ of universal truth) becomes a living, present thing."

Dewey concluded with a call to action: "Can anyone ask for better or more inspiring work? Surely to fuse into one the social and religious motive, to break down the barriers of Pharisaism and self-assertion which isolate religious thought and conduct from the common life of man, to realize the state as one Commonwealth of truth—surely, this is a cause worth battling for."[22] Thus, with Dewey the final secularization is at hand: the truth of Jesus Christ *was* the unfolding truth brought to man by modern science and modern democracy. Clearly, it was but one small step for John Dewey, as well as for other, similarly situated progressives, to abandon Christ and to keep his ardent faith in government, science, and democracy to bring about an atheized Kingdom of God on earth.[23]

If Richard T. Ely was the leading PMP and progressive in economics and the social sciences, the leading progressive activist was his indefatigable and beloved No. 2 man, Professor John Rogers Commons (b. 1862). Commons was a student of Ely's at Johns Hopkins graduate school, but even though he flunked out of graduate school, he continued ever afterward as Ely's right-hand man and perpetual activist, becoming professor of economics at the University of Wisconsin. Commons was a major force in the National Civic Federation, which was the leading

[22]Crunden, *Ministers of Reform*, pp. 57–58. Also see Quandt, "Secularization," pp. 404–5.

[23]Dewey, as H.L. Mencken put it, was "born of indestructible Vermont stock and a man of the highest bearable sobriety." Dewey was the son of a small town Vermont grocer; his mother was an ardent evangelical Congregationalist. H.L. Mencken, "Professor Veblen," in *A Mencken Chrestomathy* (New York: Alfred A. Knopf, 1949), p. 267.

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Progressive organization pushing for statism in the economy. The National Civic Federation was a big-business-financed outfit that wrote and lobbied for model legislation on a state and federal level favoring state unemployment insurance, federal regulation of trade, and regulation of public utilities. Further, it was the dominant force for progressive policies from 1900 until U.S. entry into World War I. Not only that, Commons was a founder and the leading force in the even more explicitly leftist American Association for Labor Legislation (AALL), powerful from 1907 on in pushing for public works, minimum wages, maximum hours, and pro-union legislation. The AALL, financed by Rockefeller and Morgan industrialists, was highly influential in the 1920s and 1930s. The executive secretary of the AALL was for many decades John B. Andrews, who began as a graduate assistant of Commons at the University of Wisconsin.

John R. Commons was a descendant of the famed English Puritan martyr John Rogers. His parents moved from rural Vermont to the heavily Yankee, rabidly PMP Western Reserve section of northeastern Ohio. His father was a farmer, his extremely energetic mother a schoolteacher and graduate of the virtual PMP headquarters, Oberlin College. The family moved to northeastern Indiana. Commons's mother, the financial mainstay of the family, was a highly religious pietist Presbyterian and an ardent lifelong Republican and prohibitionist. Ma Commons was anxious for her son to become a minister, and when Commons enrolled in Oberlin in 1882, his mother went with him, mother and son founding and editing a prohibitionist magazine at Oberlin. Although a Republican, Commons voted Prohibitionist in the national election of 1884. Commons felt himself lucky to be at Oberlin, and to be in at the beginnings there of the Anti-Saloon League, the single-issue pressure group that was to become the greatest single force in bringing Prohibition to America. The national organizer of the league was Howard W. Russell, then a theological student at Oberlin.

At Oberlin, Commons found a beloved mentor, James Monroe, professor of political science and history, who managed to get two Oberlin trustees to finance Commons's graduate studies at Johns Hopkins. Monroe himself was a deeply religious PMP, a protectionist and prohibitionist, and for 30 years had been a Republican Congressman from the Western Reserve. Commons was graduated from Oberlin in 1888 and proceeded to Johns Hopkins.[24] Before going to Wisconsin, Commons taught at several colleges, including Oberlin, Indiana University, and Syracuse, and helped found the American Institute for Christian Sociology, on behalf of Christian Socialism.

[24]See John R. Commons, *Myself* (Madison: University of Wisconsin Press, [1934] 1964).

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Not only did Commons go on to Wisconsin to become the major inspirer and activist of the "Wisconsin Idea," helping to set up the welfare and regulatory state in that region, several of his doctoral students at Wisconsin were to become highly influential in the Roosevelt New Deal. Selig Perlman, who was appointed to the Commons Chair at Wisconsin was, following his mentor, the major theoretician for the policies and practices of Commons's beloved American Federation of Labor. And two of Commons's other Wisconsin students, Arthur J. Altemeyer and Edwin E. Witte, were both high officials in the Industrial Commission of Wisconsin, founded by Commons to administer that state's pro-union legislation. Both Altemeyer and Witte went on from there to be major founders of Franklin Roosevelt's Social Security legislation.[25]

YANKEE WOMEN PROGRESSIVES

The Elys, Commonses, and Deweys might have might have been more notable, but the Yankee women progressives provided the shock troops of the progressive movement and hence the burgeoning welfare state. As in the case of the males, gradual but irresistible secularization set in over the decades. The abolitionist and slightly later cohort were fanatically postmillennial Christian, but the later progressive cohort, born, as we have seen, around 1860, were no less fanatical but more secular and less Christian-Kingdom oriented. The progression was virtually inevitable; after all, if your activism as a Christian evangelist had virtually nothing to do with Christian creed or liturgy or even personal reform, but was focused exclusively in using the force of government to shape up everyone, stamp out sin, and usher in a perfect society, if government is really God's major instrument of salvation, then the role of Christianity in one's practical activity began to fade into the background. Christianity became taken for granted, a background buzz; one's practical activity was designed to use the government to stamp out liquor, poverty, or whatever is defined as sin, and to impose one's own values and principles on the society.

Not only that, but by the late 19th century, as the 1860 cohort came of age, there arose greater and more specialized opportunities for female activism on behalf of statism and government intervention. The older groups, the Women's Crusades, were short-run activities, and hence could rely on short bursts of energy by married women. However, as female activism became professionalized, and became specialized into social work and settlement houses, there was little room left for any women

[25]See Joseph Dorfman, *The Economic Mind in American Civilization, 1918–1933* (New York: Viking, 1959), 4, pp. 395–98.

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except upper-class and upper-middle-class spinsters, who answered the call in droves. The settlement houses, it must be emphasized, were not simply centers for private help to the poor; they were, quite consciously, spearheads for social change and government intervention and reform.

The most prominent of the Yankee progressive social workers, and emblematic of the entire movement, was Jane Addams (b. 1860). Her father, John H. Addams, was a pietist Quaker who settled in northern Illinois, constructed a sawmill, invested in railroads and banks, and became one of the wealthiest men in northern Illinois. John H. Addams was a lifelong Republican, who attended the founding meeting of the Republican Party at Ripon, Wisconsin in 1854, and served as a Republican State Senator for 16 years.

Graduating from one of the first all-women colleges, the Rockford Female Seminary, in 1881, Jane Addams was confronted by the death of her beloved father. Intelligent, upper class, and energetic, she was faced with the dilemma of what to do with her life. She had no interest in men, so marriage was not in the cards; indeed, in her lifetime, she seems to have had several intense lesbian affairs.[26]

After eight years of indecision, Jane Addams decided to devote herself to social work, and founded the famed settlement house, Hull House, in the Chicago slums in 1889. Jane was inspired by reading the highly influential English art critic John Ruskin, who was an Oxford professor, Christian Socialist, and bitter critic of laissez-faire capitalism. Ruskin was the charismatic leader of Christian Socialism in England, which was influential in the ranks of the Anglican clergy. One of his disciples was the historian Arnold Toynbee, in whose honor Canon Samuel A. Barnett, another Ruskinian, founded the settlement house of Toynbee Hall in London in 1884. In 1888, Jane Addams went to London to observe Toynbee Hall, and there she men Canon W.H. Freemantle, close friend and mentor of Canon Barnett, and this visit settled the matter, inspiring Jane Addams to go back to Chicago to found Hull House, along with her former classmate and intimate lesbian friend Ellen Gates Starr. The major difference between Toynbee Hall and its American counterparts is that the former was staffed by male social workers who stayed for a few years and then moved on to build their careers, whereas the American settlement houses almost all constituted lifelong careers for spinster ladies.

[26]Recent feminist historians have been happy to overcome the reluctance of older historians, and have proudly "outed" the lesbianism of Addams and many other spinster Yankee progressive activists of that epoch. Probably these feminists are right, and the pervasive lesbianism of the movement is crucial to a historical understanding of why this movement got under way. At the very least, they could not simply follow other women and make a career of marriage and homemaking.

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Jane Addams was able to use her upper class connections to acquire fervent supporters, many of them women who became intimate and probably lesbian friends of Miss Addams. One staunch financial supporter was Mrs. Louise de Koven Bowen (b. 1859), whose father, John de Koven, a Chicago banker, had amassed a great fortune. Mrs. Bowen became an intimate friend of Jane Addams; she also became the treasurer, and even built a house for the settlement. Other society women supporters of Hull House included Mary Rozet Smith, who had a lesbian affair with Jane Addams, and Mrs. Russell Wright, the mother of the future-renowned architect Frank Lloyd Wright. Mary Rozet Smith, indeed, was able to replace Ellen Starr in Jane Addams's lesbian affection. She did so in two ways: by being totally submissive and self-deprecating to the militant Miss Addams, and by supplying copious financial support to Hull House. Mary and Jane proclaimed themselves "married" to each other.

One of Jane Addams's close colleagues, and probable lesbian lover, at Hull House was the tough, truculent Julia Clifford Lathrop (b. 1858), whose father, William, had migrated from upstate New York to Rockford in northern Illinois.[27] William Lathrop, an attorney, was a descendant of the eminent English Nonconformist and Yankee minister, the Reverend John Lathrop. William became a trustee of the Rockford Female Seminary, and was elected Republican U.S. Senator from Illinois. His daughter Julia was graduated from the Seminary earlier than Addams, and then went on to Vassar College. Julia Lathrop moved to Hull House in 1890, and from there developed a lifelong career in social work and government service. Julia founded the first Juvenile Court in the country, in Chicago in 1899, and then moved on to become the first female member of the Illinois State Board of Charities, and President of the National Conference of Social Work. In 1912, Lathrop was appointed by President Taft as head of the first U.S. Children's Bureau.

Ensconced in the federal government, the Children's Bureau became an outpost of the welfare state and social work engaging in activities that eerily and unpleasantly remind one of the modern era. Thus, the Children's Bureau was an unremitting center of propaganda and advocacy of federal subsidies, programs, and propaganda on behalf of the nation's mothers and children—a kind of grisly foreshadowing of "family values"

[27]On Jane Addams and her friends and colleagues, see Allen F. Davis, *American Heroine: The Life and Legend of Jane Addams* (New York: Oxford University Press, 1973). For a critical assessment of Addams, see Christopher Lasch, *The New Radicalism in America, 1889–1963: The Intellectual as a Social Type* (New York: Random House, 1965), pp. 3–37. It is all too clear that, in her 1910 autobiography, Jane Addams lied by ennobling her motivation for founding Hull House, claiming that it was the sheer horror of watching a bullfight in Spain. None of that alleged horror shines through her letters at the time.

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and Hillary Rodham Clinton's concerns for "the children" and the Children's Defense Fund. Thus, the Children's Bureau proclaimed "Baby Week" in March 1916, and again in 1917, and designated the entire year 1918 as "The Year of the Child."

After World War I, Lathrop and the Children's Bureau lobbied for, and pushed through Congress in late 1921, the Sheppard-Towner Maternity and Infancy Protection Act, providing federal funds to states that set up child hygiene or child welfare bureaus, as well as providing public instruction in maternal and infant care by nurses and physicians. Here we had the beginnings of socialized medicine as well as the socialized family. This public instruction was provided in home conferences and health centers, and to health care professionals in each area. It was also chillingly provided that these states, under the carrot of federal subsidy, would remove children from the homes of parents providing "inadequate home care," the standard of adequacy to be determined, of course, by the government and its alleged professionals. There was also to be compulsory birth registration for every baby, and federal aid for maternity and infancy.

Julia Lathrop was instrumental in persuading Sheppard-Towner to change the original bill from a welfare measure to those unable to pay into a bill designed to encompass everyone. At Lathrop put it, "The bill is designed to emphasize public responsibility for the protection of life just as already through our public schools we recognize public responsibility in the education of children." The logic of cumulative government intervention was irresistible; it's unfortunate that no one turned the logic the other way and instituted a drive for the abolition of public schooling.

If none of the opponents of Sheppard-Towner went so far as to call for the abolition of public schooling, James A. Reed (D-Mo.), the staunch laissez-faire Senator, did well enough. Caustically, Senator Reed declared that "It is now proposed to turn the control of the mothers of the land over to a few single ladies holding government jobs in Washington. . . . We would better reverse the proposal and provide for a committee of mothers to take charge of the old maids and teach them how to acquire a husband and have babies of their own."[28] Perhaps Senator Reed thereby cut to the heart of the motivation of these Yankee progressives.

At about the same time that Jane Addams and friends were founding Hull House, settlement houses were being founded in New York and Boston, also by spinster Yankee females, and also under the inspiration of Toynbee Hall. Actually, the founder of the first ephemeral settlement in New York was the male

[28]Skocpol, *Protecting Soldiers and Mothers*, pp. 500-1.

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Stanton Coit (b. 1857), born in northern Ohio to a prosperous merchant, and a descendant of the Puritan Massachusetts Yankee, John Coit. Coit obtained a Ph.D. from the University of Berlin, worked at Toynbee Hall, and then established the short-lived Neighborhood Guild settlement in New York in 1886; it failed the following year. Inspired by this example, however, three Yankee lesbians followed by founding the College Settlement Association in 1887, which established College Settlements in New York in 1889, and in Boston and Philadelphia several years later. The leading female founder was Vida Dutton Scudder (b. 1861), a wealthy Bostonian and daughter of a Congregational missionary to India. After graduating from Smith College in 1884, Vida studied literature at Oxford, and became a disciple of Ruskin and a Christian Socialist, ending up teaching at Wellesley College for over 40 years. Vida Scudder became an Episcopalian, a frank socialist, and a member of the Women's Trade Union League. The two other founders of the College Settlements were Katharine Coman (b. 1857), and her long-time lesbian lover Katharine Lee Bates. Katharine Coman was born in northern Ohio to a father who had been an ardent abolitionist and teacher in upstate New York and who moved to a farm in Ohio as a result of wounds suffered in the Civil War. Graduating from the University of Michigan, Coman taught history and political economy at Wellesley, and later became chairman of the Wellesley department of economics. Coman and Bates traveled to Europe to study and promote social insurance in the United States. Katharine Bates was a professor of English at Wellesley. Coman became a leader of the National Consumers League and of the Women's Trade Union League.

The founder of the concept of the Children's Bureau, Florence Kelley, who lobbied for both the Children's Bureau and Sheppard-Towner, was one of the few women activists who was in some way unique and not paradigmatic. In many ways, she did share the traits of the other progressive ladies. She was born in 1859, her father was a wealthy, lifelong Republican Congressman from Philadelphia, William D. Kelley, whose devotion to protective tariffs, especially for the Pennsylvania iron industry, was so intense as to earn him the sobriquet "Pig Iron" Kelley. A Protestant Irishman, he was an abolitionist and Radical Republican.

Florence Kelley differed from her colleagues on two counts: (1) she was the only one who was an outright Marxist, and (2) she was married and not a lesbian. However, in the long run, these differences did not matter very much. For Kelley's open Marxism was not, in practice, very different, in policy conclusions, from the less-systematic Fabian socialism or progressivism of her sisterhood. As such, she was able to take her place at the

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end of a spectrum that was not really very far from the mainstream of non-Marxian ladies. On the second count, Florence Kelley managed to dispose of her husband in fairly short order, and to palm off the raising of her three children onto doting friends. Thus, home and hearth proved no obstacle to Florence Kelley's militancy.

Graduating from Cornell, Florence went to study at the University of Zurich. There she promptly became a Marxist, and translated Engels's *Condition of the Working Class in England* in to English. In Zurich, Florence met and married a Russian–Jewish Marxist medical student, Lazare Wischnewetsky, in 1884, moving with her husband to New York, and having three children by 1887. In New York, Florence promptly formed the New York Consumers League, and got a law passed for inspecting women in factories. In 1891, Florence fled her husband with her kids, and went to Chicago for reasons that remain unknown to her biographers. In Chicago, she gravitated inevitably to Hull House, where she stayed for a decade. During this time, the large, volcanic, and blustery Florence Kelley helped to radicalize Jane Addams. Kelley lobbied successfully in Illinois for a law creating a legal-maximum eight-hour work day for women. She then became the first chief factory inspector in the state of Illinois, gathering about her an all-socialist staff.

Florence Kelley's husband, Dr. Wischnewetsky, had been pushed off the pages of history. But what about her children? While Florence went about the task of socializing Illinois, she was able to pass off the raising of her children onto her friends Henry Demarest Lloyd, prominent leftist *Chicago Tribune* journalist, and his wife, the daughter of one of the owners of the *Tribune*.

In 1899, Florence Kelley returned to New York, where she resided for the next quarter-century at what was by then the most prominent settlement house in New York City, the Henry Street Settlement on the Lower East Side. There, Kelley founded the National Consumers League, and was the chief lobbyist for the federal Children's Bureau and for Sheppard-Towner. She battled for minimum wage laws and maximum-hours laws for women, fought for an Equal Rights Amendment to the Constitution, and was a founding member of the NAACP. When accused of being a Bolshevik in the 1920s, Florence Kelley disingenuously pointed to her Philadelphia blue blood heritage—how could someone of such a family possibly be a Marxist?[29]

Another prominent and wealthy Yankee woman in New York City was Mary Melinda Kingsbury Simkhovitch (b. 1867).

[29]On Kelley, see Dorothy Rose Blumberg, *Florence Kelley: The Making of A Social Pioneer* (New York: Augustus M. Kelley, 1966). Also, see Kathryn Kish Sklar, "Hull House—the 1890s: A Community of Women Reformers, *Signs* 10, no. 4 (Summer 1985): 685–777.

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Born in Chestnut Hill, Massachusetts, Mary Melinda was the daughter of Isaac Kingsbury, a prominent Congregationalist and Republican merchant. She was the niece of an executive of the Pennsylvania Railroad, and a cousin of the head of Standard Oil of California. Graduating from Boston University, Mary Melinda toured Europe with her mother, studied in Germany, and was deeply moved by socialism and Marxism. Becoming engaged to Vladimir Simkhovitch, a Russian scholar, she joined him in New York when he acquired a post at Columbia. Before marrying Simkhovitch, Mary Melinda became head resident of the College Settlement in New York, studied socialism further, and learned Yiddish so as to be able to communicate better with her Lower East Side neighbors. Even after marrying Simkhovitch and acquiring two children, Mary Melinda founded her own settlement at Greenwich House, joined the New York Consumers League and Women's Trade Union League, and fought for government old-age pensions and public housing.

Particularly important for New York statism and social reform were the wealthy and socially prominent Dreier family, which gave rise to several active daughters. The Dreiers were German-Americans, but they could just as well have been Yankees, since they were fervent—if not fanatical—German evangelical pietists. Their father, Theodore Dreier, was an emigrant from Bremen who had risen to become a successful merchant; during the Civil War, he returned to Bremen and married his younger cousin, Dorothy Dreier, the daughter of an evangelical minister. Every morning, the four Dreier daughters and their brother, Edward (b. 1872), were swathed in Bible readings and the singing of hymns.

In 1898, father Dreier died, leaving several million dollars to his family. Eldest daughter Margaret (b. 1875) was able to dominate her siblings into engaging in radical and philanthropic activities at her beck and call.[30] To dramatize her altruism and alleged "sacrifice," Margaret Dreier habitually wore shoddy clothes. Active in the Consumers League, Margaret joined, and heavily financed, the new Women's Trade Union League in late 1904, joined by her sister Mary. Soon, Margaret was president of the New York WTUL and treasurer of the national WTUL. Indeed, Margaret Dreier presided over the WTUL from 1907 until 1922.

In the spring of 1905, Margaret Dreier met and married the Chicago-based progressive adventurer Raymond Robins (b. 1874). They had met, appropriately enough, when Robins delivered a lecture on the Social Gospel at an evangelical church in New York. The Robinses soon became the country's premier

[30]The one sister who slightly broke the Dreier mold was Katherine (b. 1877), an artist and patroness of modern art who, interested in organic philosophy, became pro-Nazi during the 1930s.

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progressive couple; Margaret's activities scarcely slowed down, since Chicago was at least as active a center for the welfare reformers as New York.

Raymond Robins had a checkered career as a wanderer and nomad. Born in Florida, deserted by his father and absent a mother, Robins wandered around the country, and managed to earn a law degree in California, where he became a pro-union progressive. Prospecting gold in Alaska, he saw a vision of a flaming cross in the Alaska wilds, and became a social-gospel-oriented minister. Moving to Chicago in 1901, Robins became a leading settlement house worker, associating, of course, with Hull House and "Saint Jane" Addams.

Two years after the Robins–Dreier marriage, sister Mary Dreier came to Robins and confessed her overwhelming love. Robins persuaded Mary to transmute her shameful secret passion on the altar of leftist social reform, and the two of them engaged in a lifelong secret correspondence based on their two-person "Order of the Flaming Cross."

Perhaps the most important function of Margaret Dreier for the cause was her success in bringing top female wealth into financial and political support of the leftist and welfare-state programs of the Women's Trade Union League. Included among WTUL supporters were Anne Morgan, daughter of J. Pierpont Morgan; Abby Aldrich Rockefeller, daughter of John D. Rockefeller, Jr.; Dorothy Whitney Straight, heiress to the Rockefeller-oriented Whitney family; Mary Eliza McDowell (b. 1854), a Hull House alumnus whose father owned a steel mill in Chicago; and the very wealthy Anita McCormick Blaine, daughter of Cyrus McCormick, inventor of the mechanical reaper, who had already been inducted into the movement by Jane Addams.[31]

We should not leave the Chicago scene without noting a crucial activist and academic transition to the next generation. An important academic wealthy spinster was Sophinisba Breckenridge (b. 1866), who came from a prominent Kentucky family, and was the great-granddaughter of a U.S. Senator. She, too, was not a Yankee, but she was pretty clearly a lesbian. Unhappy as a lawyer in Kentucky, Sophinisba went to the University of Chicago graduate school and became the first woman Ph.D. in political science in 1901. She continued to teach social science and social work at the University of Chicago for the rest of her career, becoming the mentor and probable long-time lesbian companion of Edith Abbott (b. 1876). Edith Abbot, born in Nebraska, had been the secretary of the Boston Trade Union League, and had studied at the London School of Economics,

[31]See Elizabeth Ann Payne, *Reform, Labor, and Feminism: Margaret Dreier Robins and the Women's Trade Union League* (Urbana: University of Illinois Press, 1988).

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where she was strongly influence by the Webbs, leaders of Fabian Socialism. She lived and worked, predictably, at a London Settlement House. Then Edith studied for a Ph.D. in economics at the University of Chicago, which she earned in 1905. Becoming an instructor at Wellesley, Edith soon joined her slightly younger sister Grace at Hull House in 1908, where the two sisters lived for the next dozen years, Edith as social research director of Hull House. In the early 1920s, Edith Abbott became Dean of the University of Chicago School of Social Service Administration, and co-edited the school's *Social Service Review* with her friend and mentor, Sophinisba Breckenridge.

Grace Abbott, two years younger than Edith, took more of an activist route. The Abbott sisters' mother had come from upstate New York, and graduated from Rockford Female Seminary; their father was an Illinois lawyer who became Lieutenant Governor of Nebraska. Grace Abbott, also living at Hull House and a close friend of Jane Addams, became Julia Clifford Lathrop's assistant at the federal Children's Bureau in 1917, and, in 1921, succeeded her mentor Lathrop as head of the Children's Bureau.

If the female social reform activists were almost all Yankee, by the late 19th century, Jewish women were beginning to add their leaven to the lump. Of the crucial 1860s cohort, the most important Jewess was Lillian D. Wald (b. 1867). Born to an upper-middle-class German and Polish-Jewish family in Cincinnati, Lillian and her family soon moved to Rochester, where she became a nurse. She then organized, in the Lower East Side of New York, the Nurses' Settlement, which was soon to become the famed Henry Street Settlement. It was Lillian Wald who first suggested a federal Children's Bureau to President Theodore Roosevelt in 1905, and who led the agitation for a federal constitutional amendment outlawing child labor. While she was not a Yankee, Lillian Wald continued in the dominant tradition by being a lesbian, forming a long-term lesbian relationship with her associate Lavina Dock. Wald, while not wealthy herself, had an uncanny ability to gain financing for Henry Street, including top Jewish financiers such as Jacob Schiff and Mrs. Solomon Loeb of the Wall Street investment-banking firm of Kuhn-Loeb, and Julius Rosenwald, then head of Sears Roebuck. Also prominent in financing Henry Street was the Milbank Fund, of the Rockefeller-affiliated family who owned the Borden Milk Company.

Rounding out the important contingent of socialist-activist Jews were the four Goldmark sisters, Helen, Pauline, Josephine, and Alice. Their father had been born in Poland, became a physician in Vienna, and was a member of the Austrian Parliament. Fleeing to the United States after the failed Revolution of 1848,

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Dr. Goldmark became a physician and chemist. He became wealthy by inventing percussion caps, and helped organized the Republican Party in the 1850s. The Goldmarks settled in Indiana.

Dr. Goldmark died in 1881, leaving eldest daughter Helen as the head of the family. Helen married the eminent Felix Adler, philosopher and founder of the Society for Ethical Culture in New York, a kind of Jewish Unitarianism. Alice married the eminent Boston Jewish lawyer Louis Dembitz Brandeis, helping to radicalize Brandeis from moderate classical liberal to socialistic progressive. Pauline (b. 1874), after graduating from Bryn Mawr in 1896, remained single, did graduate work at Columbia and Barnard in botany, zoology, and sociology, and then became assistant secretary of the New York Consumers League. Even more successful an activist was Josephine Clara Goldmark (b. 1877), who graduated from Bryn Mawr in 1898, did graduate work in education at Barnard, and then became publicity secretary of the National Consumers League, and author of the NCL's annual handbooks. In 1908, Josephine became chairman of the new NCL Committee on Legislation, and she, her sister Pauline, and Florence Kelley (along with Alice) persuaded Brandeis to write his famed Brandeis brief in the case of *Muller* v. *Oregon* (1908), claiming that the Oregon maximum-hours law for women was constitutional. In 1919, Josephine Goldmark continued her rise by becoming secretary of the Rockefeller Foundation's Committee for the Study of Nursing Education. Josephine Goldmark culminated her career by writing the first hagiographical biography of her close friend and mentor in socialistic activism, Florence Kelley.[32]

The New Deal

It was not long before these progressives and social reformers exerted an impact on American national politics. The Progressive Party was launched in 1912 by the Morgans—the party was headed by Morgan partner George W. Perkins—in a successful attempt to nominate Theodore Roosevelt, and thereby destroy President William Howard Taft, who had broken with his predecessor Roosevelt's Pro-Morgan policies. The Progressive Party included all the spearheads of this statist coalition: academic progressives, Morgan businessmen, social-gospel Protestant ministers, and, of course, our subjects, the leading progressive social workers.

Thus, delegates to the 1912 national Progressive convention in New York City included Jane Addams, Raymond Robins, and Lillian D. Weld, as well as Henry Moskowitz of the New

[32]Josephine Goldmark, *Impatient Crusader: Florence Kelley* (Champaign: University of Illinois Press, 1953).

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York Society of Ethical Culture, and Mary Kingsbury Simkhovitch of New York's Greenwich House. True to its feminist stance, the Progressive Party was also the first, except for the Prohibition Party, to include women delegates to the convention, and the first to name a woman elector, Helen J. Scott of Wisconsin. After the success of the Progressive Party in the 1912 elections, the social workers and social scientists who had flooded into the Party were convinced that they were bringing the pristine values (or rather, non-values) of "science" to political affairs. *Their* statist proposals were "scientific," and any resistance to such measures was, therefore, narrow and opposed to the spirit of science and social welfare.

In its permanent organization of 1913, the Progressive Party adopted "A Plan of Work" proposed by Jane Addams just after the election. Its major division was Progressive Science, headed by New York social worker, attorney, and sociologist Frances A. Kellor. Assisting Frances Kellor as director of the Legislative Reference Bureau, a department of the Progressive Science division, was Chicago pro-union labor lawyer Donald Richberg, later to be prominent in the Railway Labor Act of the 1920s and in the New Deal. Prominent in the Party's Bureau of Education was none other than John Dewey. But particularly important was the Party's Department of Social and Industrial Justice, headed by Jane Addams. Under her, Henry Moskowitz headed the Men's Labor committee, and upper-class philanthropist Mary E. McDowell headed Women's Labor. The Social Security Insurance committee was headed by Paul Kellogg, editor of the leading social work magazine, *Survey*, while Lillian Wald played a prominent role in the Child Welfare committee.[33]

More important than the heady few years of the Progressive Party, however, was the accelerating accumulation of influence and power in state and federal government. In particular, the ladies' settlement-house movement exerted enormous influence in shaping the New Deal, an influence that has been generally underrated.

Take, for example, Mary H. Wilmarth, daughter of a gas-fixture manufacturer, and one of the upper-class Chicago socialites who had been brought into the group of wealthy supporters of Hull House. Soon, Mary Wilmarth was to become one of the major financial supporters of the radical Women's Trade Union League. Mary's sister, Anne Wilmarth, married a Progressive Chicago attorney, the curmudgeon Harold L. Ickes, who soon became legal counsel for the WTUL. During the New Deal, Ickes was to become Franklin Roosevelt's high-profile Secretary of the Interior.

[33]On the Progressive Party, see John Allen Gable, *The Bull Moose Years: Theodore Roosevelt and the Progressive Party* (Port Washington, N.Y.: Kennikat Press, 1978).

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At the other end of the social and ethnic spectrum from the Wilmarth sisters was the short, fiery, aggressively single Polish-American Jewess, Rose Schneiderman (b. 1882). One of the most frankly left-wing figures among the female agitators, Miss Schneiderman emigrated to New York in 1890 with her family, and at the age of 21 became the organizer of the first women's local of the Jewish Socialist United Cloth Hat and Cap Makers Union. Rose was prominent in the WTUL, and played a key role in organizing the International Ladies Garment Workers Union, landing on that union's Executive Board. Rose Schneiderman was appointed to the Labor Advisory Board during the New Deal.

From Florence Kelley's National Consumers League, there came into the New Deal Molly Dewson, who became a member of Franklin Roosevelt's Social Security Board, and Josephine Roche, who became Assistant Secretary of the Treasury in the New Deal.

But there were significantly bigger fish to fry than these few lesser figures. Perhaps the leading force emerging from the women's statist, social-welfare movement was none other than Eleanor Roosevelt (b. 1884), perhaps our first bisexual First Lady. Eleanor fell under the influence of the passionately radical London prep school headmistress, Madame Marie Souvestre, who apparently set Eleanor on her lifelong course. Back in New York, Eleanor joined Florence Kelley's National Consumers League, and became a lifelong reformer. During the early 1920s, Eleanor was also active in working for, and financially supporting, Lillian Wald's Henry Street Settlement, and Mary Simhkovitch's Greenwich House. In the early 1920s, Eleanor joined the WTUL, and helped to finance that radical organization, agitating for maximum-hour and minimum-wage laws for women. Eleanor became a close friend of Molly Dewson, who later joined the Social Security Board, and of Rose Schneiderman. Eleanor also brought her friend, Mrs. Thomas W. Lamont, wife of the then-most-powerful Morgan partner, into her circle of social-reform agitators.

The woman who rose highest in rank during the New Deal, and who was highly influential in its social legislation, was Madame Frances Perkins (b. 1880), Secretary of Labor, and first female Cabinet member in U.S. history. Frances Perkins was born in Boston; both parents, who came from Maine, were active Congregationalists, and her father, Fred, was a wealthy businessman. Frances went to Mt. Holyoke in 1898, where she was elected class president. At Mt. Holyoke, Frances was swept up in the intense religious-pietist wave sweeping that college; every Saturday night, each class would conduct a prayer meeting.

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The leader of what we might call the "religious Left" on the campus was American history professor Annabelle May Soule, who organized the Mt. Holyoke chapter of the National Consumers League, urging the abolition of child labor, and of low-wage sweatshops, another prominent statist cause. It was a talk at the Mt. Holyoke by the charismatic Marxist and national leader of the NLC, Florence Kelley, that changed Frances Perkins's life and brought her on the road to lifelong welfare-state reform.

In 1913, Frances Perkins was married, in a secret ceremony, to economist Paul C. Wilson. Wilson was a wealthy, cheerful, but sickly social reformer, providing Frances a good entree into municipal reform circles. While the marriage was supposed to be a love match, it is doubtful how much the marriage meant to the tough-minded Perkins. Her friend, the unmarried welfare-activist Pauline Goldmark, lamented that Frances had married, but added that she "did it to get it off her mind." In a gesture of early feminism, Frances refused to take her husband's name. When she was named Secretary of Labor by Franklin Roosevelt, she rented a house with a close friend, the powerful and prodigiously wealthy Mary Harriman Rumsey, daughter of the great tycoon E.H. Harriman. The Harriman family was extremely powerful in the New Deal, an influence that has been largely neglected by historians. Mary Harriman Rumsey, who had been widowed in 1922, was head of the Maternity Center Administration in New York, and under the New Deal, she was chairman of the Consumer Advisory Committee of the National Recovery Administration.[34]

The close interrelation between social work, female activism, and extremely wealthy financiers is seen in the career of Frances Perkins's close friend Henry Bruere (b. 1882), who had been Wilson's best friend. Bruere was born to a physician in St. Charles, Missouri, went to the University of Chicago, attended a couple of law schools, and then did graduate work in political science at Columbia. After graduate school, Bruere resided at College Settlement and then University Settlement, and then went on from there to become Personnel Director at Morgan's International Harvester Corporation.

From then on, Bruere's life was a revolving door, going from social agencies to private corporations and back again. Thus, after Harvester, Bruere founded the Bureau of Municipal Research in New York, and became president of the New York City Board of Social Welfare. From there, it was on to Vice-president of Metropolitan Life, and the CEO of the Bowery Savings Bank, which became his operating base from the late 1920s

[34]On Mrs. Perkins, see George Whitney Martin, *Madame Secretary: Frances Perkins* (Boston: Houghton Mifflin, 1976).

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until the early 1950s.

But Henry Bruere still had plenty of time for good works. In the late 1920s and early 1930s, Bruere was a member of the Executive Committee and Board of the Welfare Council of New York City, leading the drive for government unemployment relief. Bruere was appointed by Perkins as chairman of the New York State Committee on the Stabilization of Industry in 1930, which presaged the National Recovery Administration idea of coerced government cartelization of industry. During the New Deal, Bruere also became an advisor to the federal Home Owners Loan Corporation, Federal Credit Association, to unemployment and old-age insurance, and was an advisor to the Reconstruction Finance Corporation. Bruere also became executive assistant to William Woodin, Roosevelt's first Secretary of the Treasury.

In the meanwhile, however, and this should be underscored, in addition to the high federal posts and social-welfare jobs, Bruere also hobnobbed with the financial greats, becoming a director of Harriman's Union Pacific Railroad, and a Treasurer of Edward A. Filene's left-liberal Twentieth-Century Fund. Filene was the millionaire retailer who was the major sponsor of the legal activities of his friend and oft-time counselor, Louis D. Brandeis.

As we can see from the case of Henry Bruere, after Yankee women pioneered in welfare and social-work organizations, men began to follow suit. Thus, heavily influenced by their stays at Hull House were the prominent journalist Francis Hackett; the distinguished historian and political scientist Charles A. Beard, who had also stayed at Toynbee House in London; the man who would become one of the most preeminent state-cartelists in American industry, Gerard Swope, head of the Morgans' General Electric Company; and the man who would become one of the major social and labor activists for John D. Rockefeller, Jr., and eventually the Rockefellers' man as Liberal Premier of Canada for many years, William Lyon Mackenzie King.

But perhaps the most important of the male social workers who became prominent in the New Deal was the man who became Roosevelt's Brain Truster, Secretary of Commerce, and eventually the shadowy virtual (if unofficial) Secretary of State, Harry Lloyd Hopkins (b. 1890). Hopkins, along with Eleanor Roosevelt, might be considered the leading statist social worker and activist of the 1880s cohort, the generation after the 1860s founders.

Hopkins was born in Iowa, the son of a harness maker, who later operated a general store. Following in the Yankee

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pietist social gospel mold, Hopkins's Canadian mother, Anna Pickett Hopkins, was a gospel teacher and had become president of the Methodist Home Mission Society of Iowa. Hopkins graduated from Grinnell College in Iowa in 1912, in the social sciences. Moving to New York, Hopkins promptly married the first of three wives, the Jewish heiress Ethel Gross. Hopkins plunged into the settlement-house movement, becoming a resident of the Christodora House in New York before his marriage. He then went to work for the Association for Improving the Condition of the Poor (AICP), and became a protégé of the general director of the AICP, John Adams Kingsbury (b. 1887). Kingsbury, no relation to the wealthy Mary Kingsbury Simkhovitch, had been born in rural Kansas to a father who became a Socialist high school principal in Seattle. Kingsbury, on graduation from Teachers College, Columbia, in 1909, went into professional social work.

During the Reform Administration of New York Mayor John Purroy Mitchell, Kingsbury became Commissioner of Public Charities in New York, and Hopkins was executive secretary of the Board of Child Welfare, serving on the Board together with such rising social-reform luminaries as Henry Bruere, Molly Dewson, and Frances Perkins.

From 1917 to 1922, Hopkins administered the Red Cross in the South, returning to New York to become assistant director of the AICP, while Kingsbury became CEO of the highly influential Milbank fund, which financed many medical and health projects, and was in the Rockefeller orbit. Kingsbury funded a major project for the New York Tuberculosis Association after Hopkins became its director in 1924. Kingsbury became more and more openly radical, praising to the skies the alleged medical achievements of the Soviet Union, and agitating for compulsory health insurance in the United States. Kingsbury became such an outspoken agitator against the American Medical Association that the AMA threatened a boycott of Borden's milk (the major business of the Milbank family), and succeeded in getting Kingsbury fired in 1935. But not to worry; Harry Hopkins promptly made his old friend Kingsbury a consultant to Hopkins's make-work Works Progress Administration.

How did Harry Hopkins rise from being a settlement-house worker to one of the most-powerful people in the New Deal? Part of the answer was his close friendship with W. Averill Harriman, scion of the Harriman family; his friendship with John Hertz, partner of the powerful investment-banking firm of Lehman Brothers; and his association with the rising political leader of the powerful Rockefeller family, Nelson Aldrich Rockefeller. Indeed, when Hopkins was made Secretary of Commerce in the New Deal, he offered the Assistant Secretary

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post to Nelson Rockefeller, who turned it down.

THE ROCKEFELLERS AND SOCIAL SECURITY

The Rockefellers and their intellectual and technocratic entourage were, indeed, central to the New Deal. In a deep sense, in fact, the New Deal itself constituted a radical displacement of the Morgans, who had dominated the financial and economic politics of the 1920s, by a coalition led by the Rockefellers, the Harrimans, Kuhn Loeb, and the Lehman Brothers investment-banking firms.[35] The Business Advisory Committee of the Department of Commerce, for example, which proved highly influential in drawing up New Deal measures, was dominated by the scion of the Harriman family, W. Averill Harriman, and by such Rockefeller satraps as Walter Teagle, head of Standard Oil of New Jersey. Here we have space to trace only the influence of the Rockefellers, allied with the Wisconson progressives and the graduates of the settlement houses, in creating and imposing on America the Social Security System. Here, too, was the end product of a gradual but sure process of secularization of the messianic ideal of the postmillennial pietists. Perhaps it is only fitting that a movement that began with postmillennial Yankee harridans going out into the streets and trying to destroy saloons would conclude with Wisconsin social scientists, technocrats, and Rockefeller-driven experts manipulating the levers of political power to bring about a top-down revolution in the form of the welfare state.[36]

Social Security began in 1934 when President Franklin Roosevelt commissioned a triad of his top officials to select the membership of a Committee on Economic Security (CES), which would draw up the legislation for the Social Security system. The three officials were Secretary of Labor Frances Perkins, Director of the Federal Emergency Relief Administration Harry

[35]See Thomas Ferguson, "Industrial Conflict and the Coming of the New Deal: The Triumph of Multinational Liberalism in America," in *The Rise and Fall of the New Deal Order, 1930-1980*, S. Fraser and G. Gerstle, eds. (Princeton, N.J.: Princeton University Press, 1989), pp. 3–31.

[36]The Rockefellers were originally ardent postmillennialist Baptists, John D. Sr., hailing originally from upstate New York. John D. Jr., headed the moral as well as philanthropic wing of the Rockefeller Empire, heading a grand jury in New York City in 1920 dedicated to stamping out vice in that city. After World War I, however, the Rockefeller family's hand-picked personal minister, the Reverend Harry Emerson Fosdick, spearheaded the drive of "liberal Protestantism," a secularized version of postmillennialism, in order to repel a rising tide of premillennialist "fundamentalism" in the church. Harry Fosdick became head of the Federal Council of Churches of Christ, the mainstream liberal Protestant organization. In the meanwhile, John D., Jr., made Fosdick's brother, Raymond Blaine Fosdick, head of the Rockefeller Foundation and eventually John D., Jr's official biographer. Fosdick had been a settlement house worker. The Fosdicks were born in Buffalo to a New England Yankee family. On the Fosdicks, see Murray N. Rothbard, "World War I as Fulfillment: Power and the Intellectuals, *Journal of Libertarian Studies* 9, no. 1 (Winter 1989): 92–93, 120.

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Hopkins, and Secretary of Agriculture Henry A. Wallace. The most important of this triad was Perkins, whose department came closest to jurisdiction over social security, and who presented the Administration's viewpoints at Congressional hearings. Perkins and the others decided to entrust the all-important task to Arthur Altmeyer, a Commons disciple at Wisconsin who had been secretary of the Wisconsin Industrial Commission and had administered Wisconsin's system of unemployment relief. When Roosevelt imposed the corporatist-collectivist National Recovery Administration (NRA) in 1933, Altmeyer was made director of the NRA Labor Compliance Division. Corporatist businessmen heartily approved of Altmeyer's performance on the task, notably Marion Folsom, head of Eastman Kodak, and one of the leading members of the Business Advisory Council.

Altmeyer's first choice to become chairman of the CES was none other than Dr. Bryce Stewart, director of research for the Industrial Relations Councilors (IRC). The IRC had been set up in the early 1920s by the Rockefellers, specifically John D., Jr., in charge of ideology and philanthropy for the Rockefeller empire. The IRC was the flagship scholarly and activist outfit to promote a new form of corporatist labor–management cooperation, as well as promoting pro-union and pro-welfare-state policies in industry and government. The IRC also set up influential Industrial Relations departments in Ivy League universities, notably Princeton.

Bryce Stewart, however, was hesitant about so openly taking charge of the Social Security effort on behalf of the IRC and the Rockefellers. He preferred to remain behind the scenes, do advisory consulting to the CES, and co-direct a study of unemployment insurance for the Council.

Turned down by Stewart, Altmeyer turned to his successor as secretary of the Wisconsin Industrial Commission, Commons disciple Edwin E. Witte. Witte became Executive Secretary of the CES, with the task of appointing the other members. At the suggestion of FDR, Altmeyer consulted with powerful members of the BAC, namely Swope, Teagle, and John Raskob of DuPont and General Motors, about the makeup and policies of the CES. Altmeyer and Witte also prepared names for FDR to select an Advisory Council to the CES, consisting of employer, union, and "citizen" members. In addition to Swope, Folsom, and Teagle, the Advisory Council included two other powerful corporatist businessmen. The first, Morris Leeds, was president of Leeds and Northrup, and a member of the corporate, pro-union, pro-welfare-state American Association for Labor Legislation. The second, Sam Lewisohn, was vice-president of Miami Copper Company, and former president of the AALL. Selected to head the Advisory Council was an academic front man, the

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much-beloved Southern liberal, Frank Graham, president of the University of North Carolina.

Altmeyer and Witte appointed as the members of the key Technical Board of the CES three distinguished experts, Murray Webb Latimer, J. Douglas Brown, and Barbara Nachtried Armstrong, who was the first female law professor at the University of California at Berkeley. All three were IRC affiliates, and Latimer and Brown were, indeed, eminent members of the Rockefeller–IRC network. Latimer, chairman of the Railroad Retirement Board, was a long-time employee of the IRC, and had compiled the IRC's study of industrial pensions, as well as having hammered out the details of the Railroad Retirement Act. Latimer was a member of the AALL, and helped administer insurance and pension plans for Standard Oil of New Jersey, Standard Oil of Ohio, and Standard Oil of California.

J. Douglas Brown was head of Princeton's IRC-created Industrial Relations Department, and was the point man for the CES in designing the old-age pension plan for Social Security. Brown, along with the big-business members of the Advisory Council, was particularly adamant that no employers escape the taxes for the old-age pension scheme. Brown was frankly concerned that small business not escape the cost-raising consequences of these social security tax obligation. In this way, big businesses, who were already voluntarily providing costly old-age pensions to their employees, could use the federal government to force their small-business competitors into paying for similar, costly, programs. Thus, Brown explained, in his testimony before the Senate Finance Committee in 1935, that the great boon of the employer "contribution" to old age pensions is that

> it makes uniform throughout industry a minimum cost of providing old-age security and protects the more liberal employer now providing pensions from the competition of the employer who otherwise fires the old person without a pension when superannuated. It levels up cost of old-age protection on both the progressive employer and the unprogressive employer.[37]

In other words, the legislation deliberately penalizes the lower-cost, "unprogressive," employer, and cripples him by artificially raising his costs compared to the larger employer. Also injured, of course, are the consumers and the taxpayers who are forced to pay for this largess.

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[37]Jill Quadagno, *The Transformation of Old Age Security: Class and Politics in the American Welfare State* (Chicago: University of Chicago Press, 1988), p. 112; Jill Quadagno, "Welfare Capitalism and the Social Security Act of 1935, *American Sociological Review 49* (October 1984): 641. Also see G. William Domhoff, *The Power Elite and the State: How Policy is Made in America* (New York: Aldine de Gruyter, 1990).

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It is no wonder, then, that the bigger businesses almost all backed the Social Security scheme to the hilt, while it was attacked by such associations of small business as the National Metal Trades Association, the Illinois Manufacturing Association, and the National Association of Manufacturers. By 1939, only 17 percent of American businesses favored repeal of the Social Security Act, while not one big business firm supported repeal.

Big business, indeed, collaborated enthusiastically with social security. When the Social Security Board faced the formidable task of establishing 26 million accounts for individuals, it consulted with the BAC, and Marion Folsom helped plan the creation of regional SSB centers. The BAC got the Board to hire the director of the Industrial Bureau of the Philadelphia Chamber of Commerce to serve as head registrar, and J. Douglas Brown was rewarded for his services by becoming chairman of the new, expanded Advisory Council for the Social Security Administration.

The American Association for Labor Legislation was particularly important in developing the Social Security system. This leftist social-welfare outfit, founded by Commons and headed for decades by his student John B. Andrews, was financed by Rockefeller, Morgan, and other wealthy corporate liberal financial and industrial interests. The AALL was the major developer of disability and health insurance proposals during the 1920s, and then in 1930 turned to work on model state bills for unemployment insurance. In 1932, Wisconsin adopted the AALL's plan and, under the force of AALL lobbying, the Democratic Party incorporated it into its platform. In developing Social Security, key CES Technical Board and Advisory Council posts were staffed with AALL members. Not only that, but in early 1934, Secretary Perkins asked none other than Paul Rauschenbush, the AALL's Washington lobbyist, to draft a bill for Social Security which became the basis for further discussions in the CES. The AALL was also closely associated with Florence Kelley's National Consumers League.

Paul Rauschenbush had a fascinating pedigree in his own right. Paul was the son of the leading Social-Gospel Baptist minister Walter Rauschenbush. Paul studied under John R. Commons, and was the principle author of the Wisconsin unemployment insurance law. There was even more of a progressive cast to Rauschenbush, for he married none other than Elizabeth Brandeis, daughter of the famed progressive jurist. Elizabeth also studied under Commons, and received a Ph.D. from Wisconsin. What's more, she was also a close friend of the Marxist Florence Kelley, and helped edit her aunt Josephine Goldmark's loving biography of Kelley. Elizabeth also helped write the Wisconsin

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unemployment compensation law. She taught economics at Wisconsin, rising to the post of full professor.

We can conclude by noting, with historian Irwin Yellowitz, that all these reform organizations were dominated and funded by "a small group of wealthy patricians, professional men, and social workers. Wealthy women, including some from New York society, were indispensable to the financing and staffing."[38]

[38]Irwin Yellowitz, *Labor and the Progressive Movement in New York State, 1897–1916* (Ithaca, N.Y.: Cornell University Press, 1965), p. 71. See in particular J. Craig Jenkins and Barbara G. Brents, "Social Protest, Hegemonic Competition, and Social Reform: A Political Struggle Interpretation of the American Welfare State," *American Sociological Review* 54 (December 1989): 891–909; and J. Craig Jenkins and Barbara Brents, "Capitalists and Social Security: What Did They Really Want?" *American Sociological Review* 56 (February 1991): 129–32.

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LIBERALISM VS. DEMOCRACY

Paul Gottfried*

A process that drew attention at the turn of the century, and even earlier, was the movement from a bourgeois-liberal society into a mass-democratic society. Not all of those who observed this process made the same judgments about it. Some, including the European socialists and the founding generation of American social planners, welcomed democratization; others, such as Max Weber, considered it to be an inevitable outcome of capitalism, technology, and the spread of the electoral franchise. Still others, typified by Sir James Fitzjames Stephen (1829–1894), prominent jurist and a decidedly anti-egalitarian liberal, protested the unseemly haste with which J. S. Mill and his friends greeted the new democratic age: "The waters are out and no human force can turn them back, but I do not see why as we go with the stream we need sing Hallelujah to the river god."[1]

The tension between liberalism and its successor ideology, and between the social classes embodying those ideas, provides a recurrent theme in 19th-century political debates. The Huguenot prime minister under France's liberal July monarchy and a distinguished historian of England, Francois Guizot (1787–1874), considered democracy to be as much of a curse as monarchical absolutism. As French prime minister in the 1840s, Guizot fought doggedly against the extension of the limited franchise, the *cens*, from propertied taxpayers to other French citizens. He distinguished sharply in his speeches and political tracts between those civil rights suitable for all citizens, such as freedom of worship, and the vote. By means of the second, Guizot maintained, the lower class could destabilize society, radically redistributing property and bringing resourceful demagogues to

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[1]James Fitzjames Stephen, *Liberty, Equality, Fraternity*, Stuart D. Warner, ed. (Indianapolis: Liberty Classics, 1993), p. 156. For Weber's views on the growing relation between bureaucracy and modern democracy, see *From Max Weber*, Hans Gerth and C. Wright Mills, eds. and trans. (New York: Oxford University Press), p. 139; in the same work, pp. 113–14, Weber suggests in "Politics as Vocation" that modern democracy must choose between soulless officialdom and charismatic leadership; and Max Weber, *Gesammelte Politische Schriften*, Johannes Winklemann, ed. (Tübingen: J.C.B. Mohr, 1958), pp. 532–33. For Joseph Schumpeter's arguments about the connections and differences betwen bourgeois liberalism and social democracy, see Joseph Schumpeter, "Sozialistische Möglichkeiten von heute," *Archiv für Sozialwissenschaft und Sozialpolitik*, 48 (1922): 305–6; Francois Perroux, *La Pensée économique de Joseph Schumpeter: les dynamiques du capitalisme* (Geneva: Droz, 1965); also see Schumpeter's study of the decline of bourgeois liberal society, *Capitalism, Socialism, and Democracy* (London: Unwin University Books, 1943), most particularly pp. 81–87.

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power.[2] He believed the bourgeoisie formed a *classe capacitaire,* those who would be guided by Reason and their stake in society in directing the actions of government. Indeed Guizot recommended the idea of "creating a state through representation which would fully reflect the values of bourgeois aristocracy."[3] Although in 1831 he fought for an electoral law that would give representation to government functionaries and other professionals who paid lower taxes than required for franchise eligibility, he nonetheless argued for the special suitability of the upper-middle-class for political participation. Only that class combined wealth with formed intelligence.

The English jurist William Lecky (1838–1903), who admired Guizot, devoted his long polemical work *Democracy and Liberty* (1896) to the polarity between liberal order and democratic equality. Surveying England's parliamentary history in the second half of the 19th century, Lecky worried that a universal franchise was irreversibly changing both English society and the English state.[4] His book appeared at a time when English socialism was becoming a political power, and Lecky devotes more than 140 pages to analyzing this new radicalism. In 1893, the Independent Labour Party officially came into existence in the Yorkshire town of Bradford. Since the elections of 1874, however, avowed socialists had sat in the British Parliament, and socialist labor unions had been around since the 1850s. To the consternation of German liberals, German socialists, meeting in the Saxon town of Gotha, had drafted a program in 1876 calling for public ownership of the means of production. The Gotha socialists also demanded an entire battery of social programs to be introduced by a properly democratized German state.[5] In France, the revolutionary-socialist Jules Guesde (1845–1922) sat in the Chamber of Deputies from 1893 on and, as Lecky reminds us, Guesde, in the *Catéchisme Socialiste,* presents the family as an "odious form of property," one destined to give way to a multiplicity of sexual relations for men and women alike.[6]

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[2]See Pierre Rosanvallon's intellectual biography of the famed liberal statesmen, *Le Moment Guizot* (Paris: Gallimard, 1985), pp. 75–86, 132–40.

[3]Rosanvallon, *Le Moment Guizot*, pp. 95–104; and Guizot's address before the French Assembly on 5 October 1831, cited in *Histoire parlementaire de France, recueil complet des discours prononcés dans les Chambres de 1819 à 1848 par Mr. Guizot* (Paris 1863–1864), 1, p. 316. Despite his reservations about popular rule, Guizot also praised France as "genuinely democratic" in *Histoire parlementaire de France,* 1, p. 178. The statesman then went on to limit his definition of good democracy to the principle and operation of legal equality for French citizens.

[4]William Lecky, *Democracy and Liberty* (Indianpolis: Liberty Press, 1981) 1, pp. 303–4.

[5]For a generally sympathetic, well-researched study of German socialism in English, see W.L. Guttsman, *The German Social Democratic Party: 1875–1933* (London: Allen and Unwin, 1981).

[6]Lecky, *Democracy and Liberty*, 1, p. 324.

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One way to look at such social quarrels is to observe how dated they are. These battles were supposedly waged between reactionary and democratic liberals. Those liberals who were just and humanitarian, it has been argued, went with changing times, while others who were not, such as the Franco-Italian economist and sociologist Vilfredo Pareto, fell into bad company, and even sometimes into fascism. Implicit in such a view is the distinction that more and more modern liberals have drawn throughout the 20th century, between themselves and those they have replaced. It is a purely strategic stance which minimizes the reality of past conflicts. Like the "mainstream" New Deal liberal historiography in postwar America, this liberal historical view stresses the natural progression of things by which the new liberals took over from the old.

It is possible to perceive continuity in the movement from a bourgeois liberal society into a more democratic one. But that continuity is not the same as direct continuation, as was noted by Max Weber, Joseph Schumpeter, and other early 20th-century social commentators. Rather, we are dealing here with a series of points leading from a bourgeois age into a post-bourgeois age, i.e., with a process of displacement which went on for several generations. Thus, Weber focused on "rationalization" in analyzing the movement from a bourgeois-capitalist society toward a bureaucratized-socialist society. A liberal-bourgeois world created the secularist foundations and economic organization necessary for socialist rule. Another pessimistic social commentator with liberal leanings, Joseph Schumpeter, believed that the middle-class concept of freedom encouraged the expression of critical opposition. This tolerance undermined the belief system of an older liberal society and prepared the way for social democracy. But neither of these attempts, by old-style European liberals, to find links between two distinctive social and political formations denies the differences between them. Both Weber and Schumpeter were looking at the conditions in which social changes took place, and they note the overlaps as well as distinctions between the epochs in question.

Panajotis Kondylis, a Germanophone Greek scholar whose work is not yet widely known, breaks new ground in this respect. Kondylis examines the distinctions between liberal bourgeois and mass democratic societies by looking at their literary and cultural artifacts. Modern democracies differ from pre-modern ones, according to Kondylis, in that modern democracies dissociate citizenship from cultural and ethnic identities, and in the way in which mass production affects society. The modern, as opposed to pre-modern, democrat is not communally situated and has a fluid cultural identity being shaped by a consumer

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economy.[7] He also inhabits a culture that remains hostile to the older liberal universe. Postmodernism in literature and literary criticism, Kondylis argues, is the latest in a series of cultural strategies aimed at subverting the 19th-century liberal order. The refusal to recognize a fixed or authoritative meaning for inherited texts, which is characteristic of postmodernism, represents an assault upon "liberal" education. Contrary to the world of moral and semantic order presided over by an ethical deity, which bourgeois liberals preached, the postmodernists exalt indeterminacy. They decry the acceptance of tradition in discourse, as well as in political matters, as a "fascist" act of domination—or as the inadmissible allowance of the past to intrude upon the present.

Nowhere does Kondylis call for the eradication of postmodernism or make the facile assumption that by opposing it the present generation can resurrect the bourgeois world. He contends that liberal and mass democratic societies are not only distinct but mutually antagonistic, and that this antagonism has expressed itself culturally as well as socio-economically. For over a hundred years, bourgeois liberalism has been under attack from authors and artists, presenting views about human nature and the nature of existence antithetical to bourgeois convictions. Materialism, atheism, and pluralism have been three such world views, which the bourgeoisie long viewed with justifiable suspicion. Deconstructionism is a more recent form of cultural criticism aimed at inherited assumptions about meaning. By now, Kondylis maintains, the old liberals have been reduced to a "rearguard struggle [*Nachhutgefecht*]," while watching their opponents take over culture and education.[8]

But the reason for this reduced liberal presence, Kondylis explains, is not an insidious contamination by a cultural industry separated from the rest of society. Cultural radicals have done well in mass democracies because they continue to target the liberal order which the democrats deposed. The cultural opposition continues to mobilize even after the political war has ended. Victorian rigidity, social status, and elitist attitudes about education have all remained the butts of academic and literary criticism, and this opposition points back to the conditions of strife in which mass democracy arose. This cultural insurgency, Kondylis observes, draws strength from a subversive source which once served liberalism in *its* war against the past. The Enlightenment tradition of critical rationalism was crucial for the war of ideas waged by the bourgeoisie and its defenders against the remnants of an older world. Despite the attempt to

[7]Panajotis Kondylis, *Der Niedergang der bürgerlichen Denk—und Lebensform: Die liberale Moderne und die massendemokratische Postmoderne* (Weinheim: Acta Humaniora, 1991), pp. 188–207.

[8]Kondylis, *Der Niedergang der bürgerlichen Denk-und Lebensform*, pp. 169–88.

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integrate this outlook into a bourgeois vision of life, Enlightenment rationalism has played a new destructive role, as the instrument of a war against the bourgeoisie on behalf of openness, skepticism, and material equality.[9]

These pointed observations about the culture of mass democracy do not deny the fact that cultural differences exist among democrats. Deconstructionists and liberal-democratic absolutists still fight over the values to be taught in history and literature courses. And some advocates of post-World War II abstract expressionism, such as Hilton Kramer, have come to oppose later schools of art as relative cultural traditionalists.[10] Nonetheless, radically anti-bourgeois movements have remained powerful in our cultures, as mass democracy continues to struggle against the remains of an older heritage. In the United States, traditional liberal and agrarian-democratic forces stayed alive into the 20th century, and resisted the inroads of the democratic–administrative state. Mass democracy needed a cultural as well as political strategy to triumph, and the values and concepts juggled by our literary and now media elites are the keys to the emergence of a postliberal society and politics.

Kondylis also makes clear that mass democracy could not have developed without the demographic and economic revolutions that transformed Western Europe in the 18th and 19th centuries. Industrialization, agricultural modernization, an urban working class, the disappearance of a family based craft economy, and the operation of assembly-line production were the factors, Kondylis observes, contributing to mass democracy. Although imperial Rome experienced the concentration of uprooted *proletarii* in its swelling, strife-ridden cities, it could not have produced a modern political movement, because it lacked both mass production and mass consumption. Earlier societies had to deal with perpetual scarcity and with the need to share limited resources in a communal setting. The modern West, by contrast, provides more and more material gratification to socially isolated individuals.[11] Its politics are therefore predicated on hedonism and individual self-actualization, values that give an ethical dimension to a consumer economy. Mass democratic politics also advocates material equality, as opposed to the exclusively formal or legal equality preached by 19th-century liberals.

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[9]Kondylis, *Der Niedergang der bürgerlichen Denk-und Lebensform*, pp. 238–67; see also Kondylis's analysis of the classical conservative, as opposed to classical-liberal, worldview in *Konservatismus: Geschichtlicher Gehalt und Untergang* (Stuttgart: Klett, 1986).

[10]See Hilton Kramer, *The Revenge of the Philistines: Art and Culture, 1972–1984* (New York: Free Press, 1985); also the anthologized essays from Kramer's magazine, *The New Criterion Reader: The First Five Years* (New York: Free Press, 1988).

[11]Kondylis, *Der Niedergang der bürgerlicken Denk-und Lebensform*, pp. 208–26.

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By stressing the ties between modern democracy and material pleasure, Kondylis also explains why modern democracy cannot appeal effectively in the long run to an ethic of austerity. At the end of the 18th century, both American and French Revolutionaries invoked classical ideals of republican simplicty, a practice found preeminently in the political writings of Rousseau. Self-indulgence and luxury were viewed as aristocratic flaws and, among 19th-century French republicans, as upper-middle-class vices. Democratic and later socialist revolutionaries even tried to exemplify the moral conduct which they hoped to enforce in a society of equals. The Jacobin socialist Louis August Blanqui (1805-1881) lived and dressed like a priest; and the self-proclaimed republican Sénécal in Gustave Flaubert's novel *L'Education sentimentale* (1869) is made to appear eccentric in his extreme pursuit of virtue. Sénécal is shown embracing dietary and sexual restraints and scorning sumptuous living.[12] In a similar vein, the Marxist president of Zimbabwe, Robert Mugabe, has denounced the homosexuals in his homeland. Mugabe is outraged that "sodomists and sexual perverts" continue to be found there and scoffs at the idea of "rights for those given to bestiality."[13] All of these revolutionary democratic or socialist appeals to public virtue hark back to republican models that Kondylis views as incompatible with mass democracy. What distinguishes the latter from the former, in his opinion, is the prevalence of hedonism associated with mass production and mass consumption. This ethos express itself as a ceaseless desire for consumption combined with resentment against those who have more access to pleasure.[14]

It was the failure of liberalism, from the standpoint of mass democracy, to move decisively enough toward material equality and individual self-expressiveness that led to its undoing. The defenders of bourgeois liberalism temporized when faced by the sociological evidence of inequality in their own society. They claimed to be more interested in freedom than in the further pursuit of equality, but were also more committed to family cohesion and gender distinctions than to individual freedom. The reason for this is clear, according to Kondylis. Bourgeois liberals were both economic innovators and perpetuators of an urban civilization going back to the Middle Ages. In their heyday, they spoke about sweeping change, but were never as

[12]See Albert Thibaudet's preface to Gustave Flaubert's *L'Education Sentimentale* (Paris: Gallimard, 1965). In one particularly revealing scene, following the February 1848 Revolution in Paris, Sénécal, Dussardier, and other republican zealots featured in Flaubert's novel exhort a crowd, without success, to accept lives of material austerity. One speaker, who speaks of the need to follow the primitive church, is shouted down by an alcohol vendor as a "calotin" (religious fanatic), pp. 323–33.

[13]Quoted in *The Washington Post* (9 September, 1995): A-19.

[14]Kondylis, *Der Niedergang der bürgerlichen Denk-und Lebensform*, pp. 167–69.

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dedicated to the social and cultural implications of a consumer economy as were those who replaced them.[15]

Basic to this thesis is the recognition that liberalism is a "bourgeois ideology," a set of ideas and principles indissolubly tied to the Western middle class. This does not mean that liberal principles are reducible to material interests, nor that they should be dismissed as a pretext for economic exploitation. In the early 1950s, John Plamenatz tried to separate "ideology" from the pejorative associations many Marxists had loaded onto that term. According to Plamenatz, "The word 'ideology' is not used to refer only to explicit beliefs and theories. Those who speak of 'bourgeois ideology' . . . often mean by it beliefs and attitudes implicit in the bourgeois way of speaking and behaving, and sometimes they speak of bourgeois theories and doctrines as if they did little more than make explicit these beliefs and attitudes."[16]

Understood in the cultural sense and not simply as a theoretical instrument of self-justification, liberalism exemplifies "bourgeois ideology." It designates not just liberal ideas but also their social setting, that is, the context without which liberalism becomes merely a collection of disembodied concepts or slogans. When Benjamin Constant and Francois Guizot argued for a political *juste milieu* in the 1820s, in the form of constitutional monarchy, they were not simply advocating moderation or an Aristotelian golden mean. They were looking at the educated *haute bourgeoisie* as a natural leadership class which could maneuver between the equally disastrous shoals of absolute monarchy and democracy. Guizot identified that class with the modern nation state. He believed that this political order and the bourgeoise would benefit from their historically necessary association.[17] This cultural context does not mean that the French doctrinaires, as the constitutional liberals in post-Napoleonic France called themselves, have nothing to teach our own generation. It is rather to insist on the need to avoid tendentious parallels, which arrange past figures and past movements in accordance with current appetites for a usable past.

What I am emphasizing here is the need for contextualization, the avoidance of which typifies contemporary zealotry. Appeals to human rights, as historically unbounded absolutes, now resound in political debates in which opposing sides accuse each other of relativizing values. Wars and social policies are justified by invoking self-evident truths, even though what is true in these truths may be different now from what seemed

[15]Kondylis, *Der Niedergang der bürgerlichen Denk-und Lebensform*, pp. 21-49.

[16]John Plamenatz, *Ideology* (London: Pall Mall Press, 1970), p. 21.

[17]Rosanvallon, *Le Moment Guizot*, p. 53; and Robert Fossaert, "La Théorie des classes chez Guizot et Thierry," *La Pensée*, (January/February 1955).

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self-evident about them two hundred years ago. Pointing this out is not the same as relativizing all truth. It is only to question the opportunistic and decontextualized uses to which the past has been bent.

This decontextualization of liberalism can happen in two ways: either when we place liberalism into an eternal present going back and forth in time, or else when we make its real history into a stepping stone to the present. A particularly striking case of the first comes up in F.G. Bratton's *The Legacy of the Liberal Spirit* (1943), a once widely esteemed defense of the "liberal heritage." In his preface, Bratton explains that "liberalism is not to be viewed as a 19th-century phenomenon ending with the Second World War. As an attitude toward life it has a history of 2,500 years. It goes back to the Age of Reason and the Reformation and to earlier, distant attempts to establish intellectual freedom and the life of reasons."[18] In the journey that follows, from Plato through Jesus to John Dewey, Bratton celebrates thinkers who he believes have pointed in his own direction. Thus, he favorably contrasts one North African Christian Platonist, Origen, with another, Augustine, presenting the first as a proto-liberal and the second as an obscurantist.

In *Liberalism*, John Gray also assigns liberal ratings to thinkers who lived long before the liberal era. Gray praises Pericles's "Funeral Oration" (or its reconstruction by the historian Thucydides) for its "statement of liberal egalitarian and individualist principles."[19] He thereby ignores the pervasive stress in that speech on living for the public good, which was paradigmatic for ancient Greek democracy. Modern liberal individualism existed only incipiently, if at all, in Greek antiquity, a point documented in works from N.D. Fustel de Coulanges's *The Ancient City* to Paul Rahe's *Republics Ancient and Modern*.

Among the readings of liberalism which try to shove its past into a triumphalist present are the academic apologetics discussed in the first chapter. In all fairness, it should be said that even probing critics of contemporary liberalism ascribe to it an excessively long genealogy. Christopher Lasch, John P. Diggins, and the ethical philosopher Alasdair MacIntyre have all written critically on the "liberal heritage" which they believe has descended more or less intact from earlier centuries.[20] Faith in ma-

[18]F.G. Bratton, *The Legacy of the Liberal Spirit* (Boston: Beacon Press, 1943), p. ix.

[19]John Gray, *Liberalism* (Minneapolis: University of Minnesota Press, 1986), p. 2.

[20]Paul A. Rahe, *Republics Ancient and Modern: Classical Republicanism and the American Revolution* (Chapel Hill: University of North Carolina Press, 1992); also my review essay on this book in *Modern Age* 37 (Spring 1995): 264–69; N.D. Fustel de Coulanges, *La Ville Antique* (Paris: Hachette, 1874), especially pp. 131–265. Fustel notes (p. 238) that connubial restrictions were so severe in Greek city-states and in the early Roman republic that offspring were viewed as illegitimate if the parents were not from the same polity—or from confederated ones. An Athenian law still in force as late as the fifth century, B.C., and mentioned by Plutarch, declared that *"nothos ho ek zenes e pallakidos—hos an me eks*

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terial progress as a means of solving moral problems, a buoyant skepticism about religious questions, and, especially in Diggins's analysis, individual autonomy as the end of social policy are all, in their opinion, permanent aspects of the liberal worldview. This worldview is thought to define liberalism, whether it preaches a free-market economy or the need for social democracy. Diggins and other perceptive commentators contend that people would not go on for generations speaking about a liberal heritage unless one truly existed. Those who admire John Dewey and John Rawls could, for the same reason, find something in Adam Smith and John Locke to admire. Otherwise they would not fix the same label upon all of these *maîtres à penser.*

This view of a liberal heritage is, furthermore, based on a reliable axiom in historical research, that a long-term and widely held belief in the persistence and integrity of a movement cannot be entirely illusory. Note that while classical-liberal John Gray sees his own liberalism transformed by modern social democrats, he nonetheless searches for shared ground between himself and them.[21] But this approach raises its own methodological difficulties. It overlooks several generations of agitated debates between liberals and democrats. These debates include Guizot's warnings about the "sovereignty of numbers" and Stephen's assaults on J.S. Mill's faith "that all people should live in society as equals."[22] Indeed much of the political debate in Western Europe from the second half of the 19th century into the early decades of the 20th testifies to the deep divisions between old-fashioned liberals and democratic reformers.

The French anthropologist Louis Dumont, in *Homo Aequalis,* treats as the unifying theme of the modern West the rise of "individualism within the world." Unlike the ascetic ideals of medieval Christianity and Eastern contemplative religions, Western modernity has been characterized by the belief that individual fulfillment should take place within society. This individual consciousness, Dumont explains, does not require that people withdraw from a hierarchical world based on status relations. To the contrary, it has encouraged individuals seeking success and self-expression to find it in a changing and increasingly atomized society.[23] Dumont's analysis treats the intellectual history of the Western world as a steady movement toward expressive individualism, from the Protestant Reformation to the rise of a contractual view of civil society in John Locke and in other early liberal theorists. Implicit in this interpretative per-

astes genetai nothon einai." One was considered "*nothegenes* [base-born]" who sprang from a stranger or concubine.

[21]Gray, *Liberalism,* p. xi.

[22]Stephen, *Liberty, Equality, Fraternity,* pp. 136; 137–64 *passim.*

[23]Louis Dumont, *Essais sur L'individualisme* (Paris: Editions du Seuil, 1983), pp. 33–133.

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spective is the stress by the German sociologist Ferdinand Tönnies on the movement from traditional communities to functionally oriented and highly mobile societies. Dumont focuses on the cultural and intellectual bases underlying Tönnies transition from *Gemeinschaft* to *Gesellschaft*, and he places that transition into a continuum of thought going back to the early modern period.[24]

Dumont's thematic stess on "individualism within the world" underscores a problem found in explorations appealing to root causes: they account for both too much and too little. By citing a single force that is made to account for modern culture, Dumont ignores the distinctiveness that marks specific phases of Western history from the Reformation onward.[25] Though he knows that the Protestant idea of the individual experience of divine grace has little to do with contemporary views of individual self-gratification, Dumont's interest in cultural continuity leads him to play down such a difference. His study of individuality in the West causes him to overlook short-term cultural changes, even those with powerful cumulative effects. To the extent that our own study deals with two successive epochs, what Dumont disregards is, for us, significant. Moreover, liberal democracy has accelerated some aspects of that long-range process outlined by Dumont, while making others less important. Material redistribution, as a means of individual fulfillment, has become basic to our own liberal democratic age, while the cohesion of the nuclear family has grown weaker as liberalism has lost out to liberal democracy. Differences in values can be perceived in short-term political transformations, even if the general trend of modernity is what Dumont describes.

Critics of the old bourgeois liberalism are, finally, too hasty in linking liberal concern about the social question to economic interest. As Gertrude Himmelfarb has demonstrated with regard to Victorian attitudes about work and philanthropy, questions of character formation and family responsibility were tied together in the Victorian middle-class mind. Himmelfarb argues that such an association was not a threadbare defense of low factory wages or of the lack of public works programs. Rather, it came from widely shared assumptions about the social good. The broad middle class, extending from bankers and mill own-

[24]Dumont, *Essais sur L'individualisme*; see also Louis Dumont, *Homo aequalis, I: Genèse et èpanouissement de l'idéologie économique* (Paris: Gallimond, 1977).

[25]This tendency to overgeneralize about the Reformation roots of what seem aspects of late modernity is already present in Dumont's depiction of John Calvin; see Dumont, *Essais sur l'individualisme*, pp. 72–80. Dumont's association of individual self-sufficiency and a revolution against established hierarchy, with Calvin's conception of predestined grace, also bears a striking resemblance to French clericalist polemics against Protestant modernity. This theme dominates, for example, in Jacques Maritain's *Trois Réformateurs: Luther, Descartes, Rousseau* (Paris: Plon-Nourrit, 1925), a work that also draws a provocative, although not entirely well-documented, line from the Reformation to modern individualism.

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ers to shopkeepers and church canons, rejected a welfare-state conception of government because of what they assumed were its socially destructive effects.[26]

Even if modern liberals disagree with these judgments, their disagreement does not justify substituting their own adaptation for the "liberal tradition." Whether welfare-state democrats and public administrators have refined or degraded the original article is beside the point. What they have done is to change that article in ways that would make it unrecognizable to earlier generations. Nor will it do to speak of the *failure* of earlier liberals to see the world like modern liberals. If they had seen the world differently, they would not have been liberals but social-democratic advocates of public administration. American historian James Kloppenberg accounts for Weber's liberal skepticism about "such concepts as the 'will of the people'" by pointing to the "longer context of German history." Weber, as interpreted by Kloppenberg, could not imagine the meaningful practice of egalitarian politics because "Germany had no tradition of popular sovereignty and liberals repeatedly put their faiths in elites rather than democracies to accomplish their goals."[27] True, 19th-century German bourgeois thought did not produce as much radical ferment as its English and French counterparts. But Weber's liberal doubts about the people's capacity to rule was not restricted at the turn of the century to Germanophone observers. Kloppenberg, as a social democrat who thinks of himself as "liberal," looks for "larger contexts," i.e., the peculiarities of German history, for his own ideological use: to detach the "liberal tradition" from traditional liberal views which he finds distasteful.[28]

Unlike today's liberals, traditional ones entertained deep reservations about popular rule. A belief that democracy leads inevitably to socialism was common to French liberals of the 1830s and 1840s, and it is equally apparent in Lecky, Pareto, Weber, and other liberal observers at the end of the century. Pareto and Lecky feared that democracy would bring forth a trade-union approach to economic policy. Unless put under some kind of control, democratically elected trade unionists would add to unemployment by driving up wages, which would then harm the most-expendable workers. Democratic spokesmen would also agitate to impose tariffs on foreign goods, and this would hurt domestic consumers while unleash-

[26]Gertrude Himmelfarb, *The Idea of Poverty: England in the Early Industrial Age* (New York: Alfred A. Knopf, 1984).

[27]James T. Kloppenberg, *Uncertain Victory: Social Democracy and Progressivism in European and American Thought, 1870–1920* (New York: Oxford University Press, 1986), p. 389.

[28]Kloppenberg, *Uncertain Victory*, pp. 387–88; also Walter Struve, *Elites Against Democracy: Leadership Ideals in Bourgeois Political Thought in Germany, 1890–1933* (Princeton, N.J.: Princeton University Press, 1973).

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ing reprisals from those countries whose goods were being excluded. The effects from such economic measures would then be blamed on the owners and captains of industry, and social-democratic governments would cite this accusation to justify their confiscation of the means of production.[29]

This fin-de-siècle prediction about trade-union democracy revealed the persistent liberal fear about a seizure of property, which would take place at the urging of socialists. Despite the French Revolution of 1848, in which bourgeois and social democrats went from being allies to violent enemies, a liberal view did persist, that democratized governments would become radical ones. Socialism or rampant social disorder would accompany the advent of a universal franchise. Thus Fitzjames Stephen declared with finality in 1874: "The substance of what I have to say to the disadvantage of the theory and practice of universal suffrage is that it tends to invert what I should have regarded as the true and natural relation between wisdom and folly. I think that wise and good men ought to rule those who are foolish and bad. To say that the sole function of the wise and good is to preach to their neighbors, and that everyone indiscriminately should be left to do what he likes, should be provided with a ratable share of the sovereign power in the shape of the vote, and that the result of this will be the direction of power by wisdom, seems to me the wildest romance that ever got possession of any considerable number of minds."[30] Like Stephen, Lecky feared that democracy would lead to capricious and unstable government, by overwhelming and sweeping away any national leadership. He predicted almost 20 years before it happened that the House of Lords would be disempowered; and in the 1890s he also warned that "the dissociation of the upper classes from . . . public duty is likely to prove a danger to the community."[31]

Liberal critics of mass democracy offered differing but equally grim predictions about the disposition of power in a democratic age. In the 1870s, Stephen could find no cohesive group of political leaders which might create stable rule in the world as imagined by J.S. Mill. His opponents were mere dreamers who, like the "Radicals" (the term by which he designated Mill and his circle), "look forward to an age in which an all-embracing love of Humanity will regenerate the human race.[32] Though the Radicals complain of the "petty social arrangements" in Victorian England, they lack the hardness of mind, Stephens observes, to change things for the better. In

[29]See especially Lecky, *Democracy and Liberty*, 1, pp. 350–65.

[30]Stephen, *Liberty, Equality, Fraternity*, p. 156.

[31]Lecky, *Democracy and Liberty*, 1, p. 303.

[32]Stephen, *Liberty, Equality, Fraternity*, p. 180; also B.E. Lippincott, *Victorian Critics of Democracy* (Minneapolis: University of Minnesota Press, 1938).

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time they would be swept aside by better-organized fanatics.

Another liberal critique of democracy, widespread among the doctrinaires of the 1820s, was its *primitive* character, which made it unsuited for the 19th century. Charles Rémusat and Guizot both stressed the idea that democratic republics were a product of classical antiquity. Given their need for cultural homogeneity, severe public morals, and highly restricted citizenship, popular polities did not seem destined to flourish in the 19th century. Unlike Guizot's democratic critic, and traveller in the New World, Alexis de Tocqueville, the doctrinaires did not believe that the European future belonged to democracy. They viewed the American experience as *sui generis*. According to Guizot, Americans had established popular sovereignty because they had been able to build a regime without an inherited class system.[33] Tocqueville's depiction of localism as the essence of American democracy seemed to confirm Guizot's judgment. It offered a political picture that Guizot and other doctrinaires thought had no bearing for France or for Europe in general. A Europe of highly centralized nation-states required a stable social pillar drawn from the educated bourgeoisie in order to maintain political stability. Democratic primitivism, as revealed in the chaos of the French Revolution, was the political alternative, Guizot complained, into which his democratic critics would plunge France and the rest of Europe.

The doctrinaires pointed portentously to the Jacobin rule in 1793 as a precedent for democratizing experiments. As Guizot explained in the essay "De la démocratie dans les sociétés modernes," "Democracy is a cry of war; it is the flag of the party of numbers placed below raised against those above. A flag sometimes raised in the name of the rights of men, but sometimes in the name of crude passions; sometimes raised against the most iniquitous usurpations but also sometimes against legitimate superiority."[34]

While Tocqueville and Guizot underlined the link between American democracy and America's decentralized republic, a new and fateful view of the American regime surfaced in the theorizing of George Bancroft (1800-1891). Jacksonian Democrat, career diplomat, and author of the 10-volume *History of the United States*, Bancroft admired and popularized in the United States German idealist philosophy. As a young man he had studied in Göttingen, Berlin, and Heidelberg, and while in Germany, became intimately familiar with the historical speculation

[33]Francois Guizot, "De la démocratie dans les sociétés modernes," *Revue française* 3 (November 1937): 197–208; for a general discussion of the American political example as presented by Tocqueville on the French doctrinaires, see Pierre Manet, *Intellectual History of Liberalism*, Rebecca Balinski, trans. (Princeton, N.J.: Princeton University Press, 1994), pp. 93–106.

[34]Guizot, "De la démocratie dans les sociétés modernes," p. 197.

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of G.W.F. Hegel.[35] His own work incorporated several unmistakable Hegelian themes: that history showed the progresive unfolding of the divine personality; that this process was reflected in the advance of human liberty; and that liberty had developed most fully in the Protestant Germanic world. For Bancroft, unlike Hegel, however, this progress toward liberty reached its culmination on American soil. Bancroft presents the American people as the ultimate bearers of divinely ordained liberty and makes this point explicit at the end of his *History of the Formation of the Constitution of the United States* (1882): "A new people had arisen without kings or princes or nobles. They were more sincerely religious, better educated, and of nobler minds and of purer morals than the men of any former republic. By calm meditation and friendly councils they had prepared a consitution which, in the union of freedom with strength and order, excelled every one known before."[36]

The spirit of the people thus described was held to be democratic, and Bancroft ascribed to Americans a collective wisdom which found expression in their political architecture. The American federal union, as he saw it, was no mere covenient state but "the only hope for renovating the life of the civilized world."[37] The political institutions fashioned and inspirited by America's democratic people assumed in Bancroft's writing a mystical quality , and his insistence that the voice of the people is the voice of God led Tocqueville to remark that "pantheism is the religion most characteristic of democracies."[38]

The American capacity for self-government which Bancroft exalted was not in the end the American propensity for local self-rule. Bancroft glorified a *national* democratic will, and his *History of the United States* ends appropriately with the topic "consolidating the union." According to Bancroft, an American people and an American national government were both inchoately present even before the colonies formed a nation-state: "For all the want of government, their solemn pledge to one another and mutual citizenship and perpetual union made them one people; and that people was superior to its institutions, possessing the vital form which goes before organization and gives it strength."[39]

One does not have to strain to find here a Jacobin imagina-

[35]Two favorable biographical portraits are R.B. Nye, *George Bancroft* (New York: Alfred A. Knopf, 1944); and Lilian Handlin, *George Bancroft: The Intellectual as Democrat* (New York: Harper and Row, 1984).

[36]George Bancroft, *History of the Formation of the Constitution of the United States* (New York: D. Appleton, 1882), 2, p. 366.

[37]Bancroft, *History of the Formation of the Constitution of the United States*, p. 366.

[38]Alexis de Tocqueville, *Democracy in America*, Henry Reeve, trans. (New York: Alfred A. Knopf, 1966), 2, pp. 31–32.

[39]George Bancroft, *History of the United States*, (Boston: Little, Brown, 1872), 10, p. 592.

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tion hidden behind Hegelian language. A consolidated American national government, a powerful executive representing the popular will, and a global civilizing mission are the visionary expectations that one can read into Bancroft's patriotic scholarship. Although his *History of the United States* deals predominantly with the colonial period, it points more toward the American future than back to the eighteenth century. Bancroft is celebrating the *progress* of the democratic spirit as embodied in the American nation. In the process, he replaces an older American liberal-constitutional identiy with one that Guizot and Tocqueville might have associated with their own 18th-century French revolution.[40]

While Bancroft celebrated the triumphant course of democracy in America, others, among them European liberals, grew increasingly agitated about the inevitability of popular rule. This anxiety, in some cases, became more pronounced as the 20th century began to unfold, and social problems in Europe appeared to be worsening. The most detailed critical treatment of democratic rule produced by a European liberal was *Trasformazioni della Democrazia* (1921) by the sociologist-economist Pareto. Pareto's example, as John Gray remarks, makes dramatically clear how the pre-1914 liberal mind was placed irreversibly "at a crossroads."[41] In the face of a democratic franchise, riotous trade-union strikes, and the intrusive presence of public administration, some liberals embraced authoritarian solutions. Of these, Pareto was perhaps the best known and the most deliberate, as can be judged from his social writings. In *Trasformazion*, he outlines the characteristics of the democratic epoch and its relationship to the period that had preceded it. In the 19th century, a parliamentary regime had come to Italy as the result of a fateful alliance between a "demagogic plutocracy" and the popular classes. Both had opposed the rule of landed wealth and the ecclesiastical establishment, but drew apart after a liberal, constitutional, and unified Italy had come into existence. Thereafter, the laboring class had worked to seize the wealth of the liberal middle class; by the twentieth century, it

[40]The debate about extending the suffrage in early and mid-19th-century Europe centered on differing opinions concerning the political capacity of the working class and the advance of human consciousness. Without knowingly being part of that debate, Bancroft took a position in regard to it. Moreover, in Europe, such democratizing views were associated generally with political centralization and, eventually, with the adoption of social policy. See Guizot, *Réaction et suffrage universel en France et en Allemagne* (Paris: Société d'histoire de la révolution de 1848, 1963). Rosanvallon aptly notes in *Le Moment Guizot* (pp. 136–37) that a democratic franchise was seen in the mid-19th century as an "anticipated recognition of a popular capacity more than as a consequence of the principle of civil equality." Underlying it was the anticipation of continued human progress, which would result from the expanding of human intelligence.

[41]In conversation with the author, 25 June 1993; see also Herbert W. Schneider, *Making the Fascist State* (New York: Oxford University Press, 1928), pp. 101–3; and Franz Borkenau, *Pareto* (New York: John Wiley and Sons, 1936), pp. 18–21.

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had also turned against the parliamentary institutions on which the plutocracy had built its political legitimacy.

In the aftermath of World War I, from which Italy had emerged on the side of the victors but financially crushed, unions took over the railroads, ironworks, and factories in Milan and throughout the industrialized North. Red Guard units were formed to police the worker-occupied areas, and though these units carried out the summary executions of the enemies of the working-class, the national government (then under revolving premierships) avoided military force. There was political calculation behind this hesitancy. The largest bloc in the post-war Italian parliament was the Socialists, who in 1919 had voted to nationalize key industries. They and the Catholic social-democratic Popolari held enough votes to bring down any government, and both were afraid of estranging their constituents by releasing armed forces against the *sindicalisti*. Meanwhile, landless peasants, *braccianti*, were grabbing land from large estates as a paralyzed national government conferred on these expropriations *ex post facto* approval.[42]

Pareto vented particular contempt on Giovanni Giolitti (1842–1928), the aged prime minister who formed his fifth and most disastrous government amid these trials. Pareto mocked Giolitti's "cowardice (*viltà*)" when he responded to Red Guard violence with the statement that intervention would be "tantamount to capital punishment, which would be inappropriate at the present time." Pareto contrasted Giolitti to those fascist squadrons who in the fall of 1919 moved against the "Red baronies" in Bologna and the Po Valley. For Pareto, the plutocracy had become "timorous [*imbelle*] and imbecilic," and the only groups which now seemed capable of exercising power were nationalists and union leaders: "Among the propertied class the sentiments of self-defense and property are largely spent and have begun to transform themselves into a nebulous, uncertain social responsibility, what others call 'social duty,' used interchangeably with work now defined as a 'right.' In some parts of Italy, workers invade the land and perform useless tasks, thereafter claiming the right to receive wages, which the owner has a duty to pay them. The response of many bourgeois is approval."[43] Elsewhere, Pareto notes that the hatred and combativeness manifested by the unionists toward the propertied class no longer elicited resistance: "On one side of the class divide, one sounds the trumpet and moves on to the assault; on the other, one bows one's head, capitulates, or better yet, joins

[42]Luigi Einaudi, *La condotta economica e gli effeti sociali della guerra italiana* (Bari: Laterza, 1933); and Renzo de Felice, *Mussolini* (Turin: Einaudi, 1965), 1, especially pp. 419–544.

[43]Vilfredo Pareto, *Le Trasformazioni della Democrazia*, Mario Missiroli, ed. (Milan: Capelli Editore), pp. 111–12.

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the enemy and sell one's property for thirty pieces of silver."[44]

In two political commentaries published in 1923, following the fascist advent to power of October 1922, Pareto expressed the hope that Mussolini's regime would restore economic and political order. In January 1923, he perceived "as the major difference between past and present governments that one ignored economic issues, paying attention to demagogic sentiments and particular interests, while the new government is seeking to reestablish an equilibrium between social forces."[45] At the same time, Pareto warned against the danger of taxing heavily those who were salaried or small landowners, and he recommended that moderate unionists be consulted in setting economic policy.

In September 1923, he also suggested how the fascist regime might best reform the structure of government. Pareto urged Mussolini to maintain a free press: "Let the crows caw, but be indefatigable in repressing [rebellious] deeds! Experience demonstrates that leaders who embark upon this path of censorship find headaches, rather than benefits. It may help to imitate ancient Rome: not to occupy oneself with theology but attend only to actions."[46] Pareto also advocated putting into place a new parliament which would express popular sentiments without crippling the executive. Though he readily admitted the failure of Italy's earlier parliamentary experience, he nonetheless thought that the new regime should not operate without elected institutions. He believed such institutions were necessary to stabilize and legitimate the fascist order.

In assessing these comments, written shortly before Pareto's death, it is important to keep in mind two critical factors. First, there was no reason for Pareto (and others) to believe in 1922 that the Italian fascist regime would later go berserk and ally itself, ideologically and politically, with Nazi Germany. In the early 1920s, the Italian fascists expressed neither racist nor anti-Semitic ideas, and they were willing to offer leadership in a country that had broken down economically and was on the verge of political collapse. Second, Pareto saw his own class, the bourgeoisie, as spent and demoralized. And though he hoped to preserve some of its creations, particularly a free market, a free press, and religious liberty, he did not believe that his own social class would be able to do so. He therefore thought it was necessary to turn to what he, like Machiavelli, designated as the "lions," bold warrior forces, to save what had been devised by those who had become "foxes," parliamentary schemers and finessing plutocrats.[47]

[44]Pareto, *Le Trasformazioni della Democrazia*, p. 113.
[45]Pareto, *Le Trasformazioni della Democrazia*, p. 162.
[46]Pareto, *Le Trasformazioni della Democrazia*, pp. 169–70.
[47]See Missiroli's preface to *Le Tranformazioni della Democrazia*, pp. 9–31; and W. Rex Crawford, "Representative Italian Contributions to Sociology: Pareto, Loria, Vaccaro, and Sichele," *An Introduction to the History of Sociology*, H.E. Barnes, ed. (Chicago: Unviersity of Chicago Press, 1948); and Paolo Maria Arcani, *So-*

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What Pareto saw happening in Italy seemed to belong to a broader civilizational context. Throughout his writing, he used the concept of "uniformities," which he applied to both economic and social affairs and which he claimed to have derived from an "experimental research method." The long-term invariability of the income curve and the equivalent advantages to producers of a "perfectly organized" monopoly and of an unimpeded free market are two such laws that are worked out in Pareto's major economic works. In *Trattato di Sociologia generale* (1916), he developed a theory of psychological predispositions to explain social behavior. In this analysis we find six such predispositions, which Pareto called "residues" and associated with changing movements and ideologies, known as "derivations." The six residues underlying group behavior are the instinct for combination, the persistence of aggregates, the desire to manifest one's beliefs, sociality, the integrity of the individual, and the sexual drive.[48]

It is the instinct for combination and related residues three and four which actuate groups on the rise, while the persistence of aggregates and the concern about individual interest are most characteristic of established elites. Pareto discussed those residues operating within Italian society in the context of his social observations. He believed that the waning of liberalism, conspicuous in his own country, was taking place throughout the industrialized West. The liberal bourgeoisie had lost its assertiveness in the face of an insurgent working class and of other "democratic" forces expressing instincts for combination and group solidarity.

In World War I, according to Pareto, the parliamentary plutocrats had triumphed over the German military aristocracy but had succumbed to the democratic classes without which they could not have hoped to win the war. The only force now able to resist the revolutionary socialists, Pareto maintained, were the nationalists who drew upon the same residues prevalent among the socialists. Socialism and nationalism seemed to be related derivations, both resulting from residues leading to collective action.

Among his last published remarks were those on Italian constitutional reform addressed to the new fascist government, on 25 September 1923: "Under democratic ideology runs the current of fascism which overflows at the surface. But beneath that runs a countercurrent. Beware lest that countercurrent overflow! Beware lest you bestow upon it power by trying to close

cialismo e democrazia nel pensiero di Vifredo Pareto (Rome: Volipe, 1966).

[48]The *Trattato* was translated as *The Mind and Society: A Treatise on General Sociology*, Andrew Bongiorno and Arthur Livingston, trans. (New York: AMS Press, [1935] 1983), esp. pp. 2458–72.

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it off completely!"[49] Pareto believed that the fascists and their socialist enemies were harnessing the same democratic enthusiasm which a now-declining liberal society had given up trying to oppose. He felt that the fascists would have to coexist with social democracy, but hoped they would do so on their own terms.

Pareto's appeal to some aspects of the liberal heritage occurred in the face of what he took to be an irrevocable political change. The march toward democracy would continue no matter what, and the "decadence of the Roman plutocracy was only a portent of the destiny towering above our own plutocrats."[50] An activist and redistributionist democratic government was about to arrive, and unlike Lecky a generation earlier, Pareto had no doubt that a corresponding elite was arising to take charge of modern democracy. Political upheavals did not transpire randomly, but were the work of purposeful elites who took advantage of their consequences. Faced by the Italian nationalists and the priesthood of "the social proletariat," Pareto opted for what he considered to be the more moderate democratic leadership. In fact, he chose what turned out to be the less farsighted of the two aspiring democratic elites. In the 20th century, it was the exponents of working-class democracy, and not of democratic nationalism, who made the more compelling claim to represent liberal democracy.

Significantly, social-democratic planners took over a form of discourse more closely akin to Pareto's than to that of the Italian fascists. In Scandinavia, England, and the United States they appealed to "experimental-scientific" methods in education and public policy, and they presented their takeover of civil society as an act of liberating individuals and upholding their rights. But they also appealed effectively for several generations to democratic legitimacy, unlike the Italian fascists who were forced to manufacture popular endorsements for their plans. It is not surprising that by the end of the century social democratic planning has given rise to what Charles Krauthammer calls "reactionary liberalism: holding fast to the structures and constituencies of the welfare state, come what may."[51] More interesting is the fact that this "liberal democracy" held up for more

[49]These last two written works by Pareto are attached to Missiroli's edition of *Le Trasformazioni*, pp. 161–73.

It should be stressed that we are here dealing with Pareto's view of Italian fascism. Though Renzo de Felice may be right in treating the Italian fascist movement as a modernizing force associated with the historical Left, Pareto perceived it differently, namely as a possible safeguard for the achievements of bourgeois civilization. See Renzo DeFelice's by now widely-accepted view of the Italian fascist movement in *Interpretations of Fascism*, Brenda Huff Everett, trans. (Cambridge, Mass.: Harvard University Press, 1977).

[50]Pareto, *Le Trasformazioni della Democrazia*, p. 109.

[51]Charles Krauthammer, "Jones Beach and the Decline of Liberalism," *Time* (Sep. 5 1994): 82.

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than half a century in the most prosperous and literate areas of the world, with popular approval.

This result indicates that some European liberals read the political future with clearer eyes than others. Despite his demonstrated polemical skill, Fitzjames Stephen underestimated J.S. Mill's capacity to plan a popular regime. Mill did not intend to leave the uninstructed mass to do as they please. Maurice Cowling notes that Mill staked his democratic hopes on a Religion of Humanity, "a better religion than any of those which are ordinarily called by that title," and on a "new clerisy" which would work to instill a universal faith in rationality. Unlike the Anglican clergy and most of the English professoriate, Mill's clerisy would propagate scientific method and political sociology, seen as the true science of society.[52] This elite would rise in response to social need and to the spread of secular rationalism. It would train citizens to emulate its own rationality and bring them into fellowship with the advocates of social progress everywhere.

Cowling further argues that Mill's devotion to intellectual freedom was conditioned by his concern about "great minds" being crushed by mediocrity. Mill was less of a libertarian than someone looking out for the "highest natures," "noblest minds," and the advancement of scientific "truth." Note that Mill favored extensive state intervention in the economy and the ongoing redistribution of incomes. He also hoped that his own elite would take charge of the "general culture." It would thereby become possible to teach and apply his own utilitarian ethic, which Mill assumed would bring forth a new social morality. All enlightened citizens would eventually accept the utilitarian notion that the Good is that which maximizes general happiness. But, as Cowling perceives, the "highest end," which men here were imagined to pursue in quest of pleasure, was whatever Mill and his confrerès desired for themselves. They never doubted that their own social preferences would come to prevail in a democratic age.[53]

Clearly, Fitzjames Stephen and his younger brother Leslie Stephen, though both sagacious critics of Mill, did not fully see his authoritarian side. They did not grasp the "inquisitiorial certainty" which Cowling exposes at the core of his method of inquiry. Nor did they appreciate the dogmatic way in which Mill generalized about subjects he had never studied: "Mill knew little in detail about the history of British society in the two

[52]Maurice Cowling, *Mill and Liberalism* (Cambridge: Cambridge University Press, 1963), pp. 87–88; and J.S. Mill, *Three Essays on Religion* (New York: Aris Press, 1995), p. 110.

[53]Cowling insists that Mill's conviction, as stated in *Utilitarianism*, that general happiness can best be advanced by making everyone rational and free of religious prejudice, undergirds his entire ethic. See Cowling, *Mill and Liberalism*, pp. 52–53 and Mill's *Utilitarianism* (New York: American Classical College Press, 1988), pp. 192–93.

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hundred and fifty hears before he was born. His denigration of its polity and religion was based neither on close observation nor on exact historical knowledge."[54]

Finally, Mill's liberal critics underestimated the power of his vision of a new clerisy crafting and directing a democratic order. However weak may have been his grasp of the past, Mill evoked a society of democratic planners which would arise after his death. His twisting of historical data and fudging of laws of human progress were of less significance than Mill's ability to foresee mass democracy at work. No other mid-19th-century figure, including Tocqueville, exhibited such understanding of the dawning democratic age even if that understanding, as in Mill's case, was ideologically colored. And only one European liberal, Max Weber, revealed comparable insight in plotting the likely course of modern democracy. Unlike those liberals who trembled over the fate of property and parliamentary civility, Weber associated democratic life with the "iron cage of bureaucracy." Like Pareto, he was willing to entrust democratic government to plebiscitary leaders, but not because of the fear of anarchy, but because of his dread of bureaucratic despotism.[55]

In an oft-quoted letter from Weber to the sociologist of elites, Robert Michels, at the end of World War I, Weber questions the intelligence or honesty of those who exalt the "will of the people." He goes on to admit that "genuine wills of the people have ceased to exist for me; they are fictitious. All ideas aiming at abolishing the dominance of man over man are 'Utopian.'"[56] In 1918, Weber observed even more incisively: "In large states everywhere modern democracy is becoming a bureaucratized democracy. And it must be so; for it is replacing the aristocratic or other titular officials by a paid civil service. It is the same everywhere, it is the same within parties too. It is inevitable."[57] Despite the attempt by Weber's critics to attribute such remarks to the "anemia of German liberalism," what they indicate is Weber's deep perception of a secular trend: the intertwining of mass democracy and public administration as the shape of things to come.

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[54]Cowling, *Mill and Liberalism*, p. 145.

[55]Two of Weber's extended observations on the need for plebscitary authority in modern democracy to circumvent bureaucratic tyranny are *Economy and Society*, Guenther Roth and Claus Wittich, eds., Ephraim Fischoll, trans. (Berkeley: University of California Press, 1978), 1, pp. 268–69; and Marianne Weber, *Max Weber: A Biography*, Harry Lohn, trans. (New York: John Wiley, 1975), p. 653.

[56]Quoted in Wolfgang Mommsen, *The Age of Bureaucracy: Perspectives on the Political Sociology of Max Weber* (New York: Harper and Row, 1974), p. 87.

[57] Max Weber, "Speech for Austrian Officers in Vienna," *The Interpretation of Social Reality*, J.E.T. Eldridge, ed. (New York: Charles Scribner's Sons, 1971), p. 197. See also Roslyn Wallach Bologh, "Max Weber and the Dilemma of Nationality," in *Max Weber's Political Sociology*, Ronald M Glassman and Vatro Murvar, eds. (Westport, Conn.: Greenwood Press, 1984), pp. 175–86.

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THE EPOCH OF NATIONAL SOCIALISM

Karlheinz Weissmann*

In two by-elections in the spring of 1996, the *Front National* (FN), the party of the radical right in France, helped several candidates of the left gain victory. In Sète, a southern seaport, a communist therefore was able to become mayor. It was in this manner that the leader of the FN, Jean-Marie Le Pen, responded to the rejection of his coalition offers by the Gaullists and the Liberals. At the same time, Le Pen tried to prove his slogan "neither right nor left, but French." His calculation appeared to work. Contrary to widespread expectations, the FN, founded in 1981, has not remained a short-lived protest movement, but has stabilized and even expanded its support in recent years. Its voters no longer come only from the lower-middle class and the bourgeoisie, but also from the working class. During the local elections in June 1995, 30 percent of the workers and 25 percent of the unemployed voted for Le Pen's party. Almost 20 percent of his supporters consider themselves "left."[1]

There is nothing new about political movements which are nationalist in their goals, and hence right, but whose clientele largely comes from the political left and traditionally supports socialist parties. Theoreticians of a national-socialist state first appeared at the end of the 19th century, and shortly afterward nationalsocial, national-socialist, or socialist-nationalist groups were founded in England, France, Germany, Italy, and Austria. The various circles and parties were at the fringes of the socialist movement (Arbeiterbewegung). However, their origin was not accidental but intimately tied to the formation and democratization of the nation state. "Just as national liberalism and national conservatism existed, there had to be national socialism."[2] Industrialization, combined with the idea of a relatively homogeneous community of people (Volksgemeinschaft), which provided its members with collective economic security, led all over Europe, even before the outbreak of World War I, to the view of the state as an "armed producers' association with a national foundation."[3] World War I confirmed this new association

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[1]See the report by Thankmar von Münchhausen, "Wurzeln in der Unterschicht," *Frankfurter Allgemeine Zeitung* 89 (April 16, 1996).

[2]Ernst Nolte, *Streitpunkte. Heutige und künftige Kontroversen um den Nationalsozialismus* (Berlin, 1993), p. 212.

[3]Walther Rathenau, *Zur Kritik der Zeit [1912], Gesammelte Schriften* 1 (Berlin, 1925), p. 68.

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between a national and a social order. The breakdown of the Socialist International, truce-making policies, and war socialism corresponded to the expectations of many national-socialists. One of them, Benito Mussolini, would justify his claim to power in Italy by pointing out that, during the war, the missed revolution had been accomplished and the *risorgimento* completed, and that in the trenches the working class and the nation had been reconciled.

The compromises which Italian Fascism had to accept after its rise to power made it appear initially more like a conventional educational dictatorship than like the prototype of a national-socialist order, and only after a short period of relaxation did the great crisis of the liberal system lead to the victory of a radical national-socialist variant. More than the special path (Sonderweg) or the late consequences of the Versailles treaty, the attraction of a program that promised national and social regeneration under strong leadership came to bear during the early 1930s in Germany. Hitler's state appeared as a model of a new order between liberal capitalism and communism, not only to many Germans, but also to many small national-socialist movements in Europe. Yet, these national socialisms could no more succeed on their own than could the communist movements, and their hope for a European revolution with the help of the Wehrmacht was ruined by Hitler's inability to put his military successes from 1939 to 1941 to constructive use. This, combined with Hitler's Katastrophenpolitik, was the main reason why not only his regime but national socialism as a whole was discredited.

The national-socialist ideology could only survive the end of World War II disguised as internationalism within the Third World liberation movements. The idea of "African," Arab, Indian, or Cuban socialism did not vanish until the collapse of the Soviet system. Even then, the idea of national socialism did not entirely die. Where the promises of a new world economic order remained unfulfilled, the crisis into which the nation state has slid as a result of the globalization of economy and technology has led to defensive reactions which try to preserve the national welfare state and create post-modern National Socialism that lacks the utopian and totalitarian features of the older brand of national socialism.[4]

The Darwinian Left and the Concept of Eugenic Socialism

It is impossible to understand the rise of national socialism before World War I without noting the paradigm change that

[4]See Rolf Peter Sieferle, *Epochenwechsel: Die Deutschen an der Schwelle zum 21. Jahrhundert* (Berlin, 1993), p. 212.

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took place at the end of the 19th century. All national-socialist concepts (in the widest sense of this term) came about in connection with Social Darwinism, which exercized an extraordinary influence in Europe, first on the educated classes and then on the general population. Francis Galton, the originator of this theory, spoke of a new religion to characterize the explosive force contained in an idea that Darwin had only suggested.[5] Not only the animal kingdom but man as well is the result of a struggle for survival and the selection of the fittest. After man's victory over his natural enemies, this *struggle for life* shifted from nature to history, expressed in the competition between different social classes or strata, and in the antagonism between the races and peoples. According to Galton, it was neither possible nor desirable for mankind to extricate itself from the laws of evolution,[6] even if reason no longer subjected man to blind fate: Social Darwinism offered at the same time a theoretical concept with which to understand the operation of nature within human society and created the possibility—by means of eugenics—to actively interfere so as to improve mankind.

Social Darwinism has dealt a deadly blow not only to Christian creationism but also to the idea, dominant since the enlightenment, that history would find its fulfillment in an all-encompassing humanization of man. Darwin, still convinced of the intelligibility of the world and the idea of human progress, unwittingly created the precondition for a dramatic change in the intellectual atmosphere from his death in 1882 to the outbreak of World War I. What French anthropologist and sociologist Georges Vacher de Lapouge expressed about the foundations of human existence was, in many respects, only the brutal consequence of then widely held views: "One neither decides to become a member of a family nor a nation. The blood, which runs in one's veins from birth on, one keeps for one's entire life. The individual is dominated by his race and is nothing. The race, the nation is everything. Every man is related to all other men and all living beings. There is no such thing as human rights, no more than there are rights of the armadillo or the Gibbons syndactylus, of the horse which is harnessed or the ox which one eats. As soon as man loses the privilege of being a special being created in God's image, he possesses no more rights than any other mammal. The idea of justice is an illusion. There exists nothing but force. Rights are only agreements—contracts between equal or unequal powers."[7]

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[5]Francis Galton, *Essays in Eugenics*, London 1909, p.42, also 24, 25; Francis Galton, *Memories of My Life* (London, 1908), pp. 310f.

[6]The environmental theory and the ideas of the Lamarckists were rejected with reference to the discovery of the laws of genetics by Gregor Mendel.

[7]Georges Vacher de Lapouge, *L'Aryen, son rôle sociale. Cours libre de science politique: Professé a l'Universite de Montpellier (1889–1890)* (Paris, 1899), pp. 511f.

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What makes Vacher de Lapouge's case noteworthy is the fact that he—unlike Galton and most other social Darwinists—sympathized with the political left. In the 1880s and 1890s, he wrote for various journals of the French socialists and ran repeatedly as a candidate for the *Parti socialiste ouvrier*. He accepted the central ideas of Arthur de Gobineau,[8] but he rejected Gobineau's aristocratic pessimism. In contrast, he liked the fatalistic view of the Marxists, yet had nothing but contempt for their utopian view of a conflict-free universal society. Vacher de Lapouge advocated a socialist order because only such an order could assure that each individual's racially based abilities could be determined independently of his class. When the "non-doctrinaire socialist" declared in an article published in 1896 that "socialism will be selectionist or it will not be at all,"[9] he meant above all that the left should adopt the program of a radical eugenic: the breeding of the Aryan man of the future could only be achieved if, without regard to family background or social status, all "racially inferior" were prevented from procreation, while all superior men, in addition to a *service militaire*, would be required to perform a *service sexuelle* without regard to all traditional norms of sexual behavior. Only if this political model of socialist eugenics were implemented, according to Vacher de Lapouge, would there be any chance that France would survive the impending great conflicts.

Despite the violent rejection of his anthroposociology in academia,[10] Vacher de Lapouge was by no means alone with his ideas among the French left. There were numerous individuals and groups who considered class struggle and race struggle as one and the same thing—especially with reference to the Jews,[11] who were seen as at the same time the embodiment of captalism and German–Marxist internationalism.[12] In the last part of his main work *L'Aryen, son rôle sociale*, published in 1899, Vacher de Lapouge wrote with considerable optimism that "selectionism" had "with respect to its purpose much in common with socialism, in so far as they wanted to correct the

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[8] Gobineau had published a classic of race theory with his *Essay Sur C'inega-lite des Races* in 1853–55.

[9] Quoted from Jean Boissel, "George Vacher de Lapouge: Un socialiste revolutionnaire darwinien," *Nouvelle Ecole* 13 (1982): 59–83, here p. 74.

[10] See Linda L. Clark, *Social Darwinism in France* (Tuscaloosa: University of Alabama Press, 1984), p. 144.

[11] Lapouge regarded the Jews, in contrast to most race theoreticians, not as a race but as a nationality. His antisemitism stemmed from the belief that the Jews used democracy to conceal their rule. The socialists, on account of their struggle against the plutocracy, would be the natural allies of selectionism. See Günter Nagel, *George Vacher de Lapouge (1854-1936): Ein Beitrag zur Geschichte des Sozialdarwinismus in Frankreich* (Freiburg, 1975), esp. pp. 39f., 59.

[12] See Edmund Silberner, *Sozialisten zur Judenfrage: Ein Beitrag zur Geschichte des Sozialismus vom Anfang des 19.Jahrhunderts bis 1914* (Berlin, 1962), pp. 65–82.

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natural consequences of economic development with the ultimate goal of social perfection."[13]

Although Karl Marx and Friedrich Engels warned early on against a naturalistic interpretation of human history, and most socialists hoped for the final "displacement of the power of nature by the power of reason,"[14] Darwinian ideas had found acceptance in German social democracy since the 1870s. Indeed, eugenic concepts were widely accepted as modern instruments for the advancement of social welfare. The German Darwinian left, however, was restricted, as in France, to a small group of intellectuals. A first—actually premature—representative of this ideological direction was philosopher Eugen Dühring, who ultimately lost against the Marxists within the Social Democratic Party (SPD) and became increasingly isolated, but early on exercized considerable influence on the socialist movement. Düring was an ardent defender of the "descendence-theory," and unyieldingly maintained his idea of a special type of "socialism of the Aryan people" and the simultaneous "restriction, concentration, and exclusion" of the Jews.[15] In some respects, his ideas were similar to those advocated a generation later by Ludwig Woltmann. However, Woltmann considered himself above all a student of Vacher de Lapouge. Woltman even published Vacher de Lapouge's work after it could no longer appear in France, in his *Politisch-anthropologische Revue.* Woltmann, a physician and private scholar, had begun as a tradtional socialist, and accordingly had rejected the selectionism of the "bourgeois-Darwinians."[16] However, he held that the human races were distinct and of different value.[17] Like Vacher de Lapouge, Woltmann believed that only the Aryans, and in particular the Germans, were culturally creative. He explains the prospect of future developments in the conclusions of one of his main works, *Politische Anthropologie,* as follows: "In its final development, the capitalist mode of production will become an obstacle for the

[13]Lapouge, *L'Aryen*, p. 504. However, among his students neither Americans Madison Grant and Carlos-C. Closson, nor the Spaniard Luis Huerta, nor the Norwegian Jon Alfred Mjoen considered themselves socialists. Only the theories of Germans Eugen Dühring and Ludwig Woltmann corresponded to Vacher de Lapouge's idea about a special affinity between socialism and Darwinism.

[14]Ludwig Büchner, "Darwinismus und Sozialismus oder Der Kampf um das Dasein und die moderne Gesellschaft," *Darwinistische Schriften,* Erste Folge 19, (Leipzig, 1894), p. 18.

[15]Quoted from Gerd-Klaus Kaltenbrunner, "Vom Konkurrenten des Karl Marx zum Vorläufer Hitlers: Eugen Dühring," in *Propheten des Nationalismus,* Karl Schwedhelm, ed., (Munich, 1969), pp. 36–55, here p. 51.

[16]Ludwig Woltmann, *Die Darwinsche Theorie und der Sozialismus: Ein Beitrag zur Naturgeschichte der menschlichen Gesellschaft* (Duesseldorf, 1899), p. 67.

[17]Similar were the views of other eugenicists in the camp of the Social Democrats, for example Alfred Grotjahn and Alfred Ploetz. See on this Michael Schwartz, "'Proletarier' und 'Lumpen.' Sozialistische Ursprünge eugenischen Denkens," *Vierteljahreshefte fuer Zeitgeschichte* 42 (1994): 537–70, here p. 563; also see Rolf-Peter Sieferle, *Die Krise der menschlichen Natur: Zur Geschichte eines Konzepts* (Frankfurt/M., 1989), esp. p. 125.

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social selection of natural talents and indeed become antiselectionist. Hence, we are convinced that the future will bring great economic upheavals which will have a constitutional-collectivist character." The "Germanic strata" within the leadership of the Social Democrats would take advantage of these upheavals and assume partial power. "Only actual responsibility can cure the working class of the unnatural craze of internationalism which will suffocate the perfecting competition between nations for economic, political, and intellectual supremacy."[18]

Woltmann did not achieve much further influence due to his death in 1907, and Vacher de Lapouge could not gain a large following because of the eccentricity of his position—he expected the self-extinction of the contemporary French once they had grasped their own racial inferiority. However, in Great Britain, Karl Pearson succeeded in gaining considerable influence on leading circles within the socialist movement. Since the 1880s, Pearson had belonged to a circle of radical intellectuals assembling around Eleanor Marx, Havelock Ellis, George Bernhard Shaw, and Sidney and Beatrice Webb, all of whom would later become leaders of the socialist Fabian Society.[19] Pearson was equally impressed by Marxism, but during his study in Germany he had also learned to understand the significance of the practical social reforms implemented by Bismarck. It cannot be ruled out that Pearson also came in direct contact with the ideas of the "Katheder-Sozialisten,"[20] and in any case he was affected by Fichte's ideas concerning the isolated state (geschlossenen Handelsstaat). However, the decisive motive for his specific type of socialism was his encounter with the Darwinian doctrine, which appeared to him to provide the key to understanding all central social developments. He sharply rejected the earlier Social Darwinists, such as Herbert Spencer and Ernst Haeckel, who had applied the idea of a struggle for life solely to individuals, while in fact it concerned the fitness of collectives.[21] Socialism, for Pearson, was not so much a specific form of economc organization but rather a general "tendency towards social organization always prominent in progressive communities."[22]

Pearson initially worked as a mathematician, but in 1911, through the influence of Galton, he received the first chair for

[18]Ludwig Woltmann, *Politische Anthropologie: Eine Untersuchung ueber den Einfluss der Descendenztheorie auf die Lehre von der politischen Entwicklung der Völker* (Jena, 1903), pp. 325f.

[19]See Daniel J. Kevles, *In the Name of Eugenics: Genetics and the Uses of Human Heredity* (New York: Alfred A. Knopf, 1985), p. 24.

[20]See Bernard Semmel, *Imperialism and Social Reform: English Social-Imperial Thought 1895-1914* (Cambridge, Mass.: Harvard University Press, 1960), p. 38.

[21]According to Pearson, the nation was an "organized whole." See Karl Pearson, *National Life from the Standpoint of Science* (London, 1905), p. 46.

[22]Karl Pearson, *The Grammar of Science* (London, 1900), p. 365.

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eugenics at the University of London. In the course of his statistical investigations, he had become interested in the problem of eugenics, and his analyses reinforced his conviction that the progress of medicine and hygiene leads to the proliferation of "inferior" people. In particular, other races, especially the Irish and the Jews, threatened the existence of the "English race." For Pearson's "socialism of the future", similar as for Vacher de Lapouge and Woltmann, but also the Webbs, Shaw, and the Fabian Herbert George Wells[23], an encompassing and thorough eugenic politics was essential. The state should assume the power to regulate the procreation according to its desires. A society that was based on traditional values and morals, that entrusted all decisions to a debating parliament, and that tolerated extreme differences of wealth was incapable of doing so. Equality was necessary in order to find out who was worthy of procreating. The demand for equality was not based on natural human rights—"there is no natural equality of human races, any more than there is a natural equality of human beings"[24]—but rather on the demonstration of healthy genetic material. Only the genetically superior would have equal rights, regardless of social background or wealth of their forefathers. Only socialism seemed to assure that the most able and talented would rise to the top of the state and prepare the nation to survive the inescapable wars against "inferior races or equal races in the fight for trade routes, natural resources and food supplies,"[25] and to appropriate the means for preserving English socialism.

EMPIRE SOCIALISM AND THE CULT OF EFFICIENCY

In 1917, Lenin wrote: "Imperialist ideology also penetrates the working class. It is not separated by a Chinese wall from the other classes," and even at the beginning of the century in England the appearance of Fabian-imperialists, who advocated the creation of a world empire in the name of the proletariat, was apparent.[26]

If one removes his polemics against the "opportunistic" parts of the workers movement, it cannot be denied that Lenin's statement was correct. In the 1880s, Robert Blatchford, editor of the largest socialist weekly in Great Britain, *The Clarion*, had developed his ideas of "socialism of the barracks."[27] Blatchford

[23]See Semmel, *Imperialism*, p. 51.

[24]Karl Pearson, *Social Problems: Their Treatment, Past, Present and Future* (London, 1912), p. 7.

[25]Quoted from Hannon Kesting, *Herrschaft und Knechtschaft: Die 'soziale Frage' und ihre Loesungen* (Freiburg), p. 75.

[26]V.I. Lenin, *Der Imperialismus als höchstes Stadium des Kapitalismus* [1917], in W.I. Lenin, *Theorie-Ökonomie-Politik: Ausgewählte Texte und Werke*, I. Fetscher, ed. (Stuttgart, 1974), p. 227.

[27]See Semmel, *Imperialism*, p. 225.

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proposed in a sharp anti-liberal turn the amalgamation of the workers movement and nationalism.

It was even more important, however, that there were representatives of an Empire socialism within the leadership of the Fabians. The best known among these was initially Benjamin Kidd who, in 1894, had acquired sudden fame with the publication of his book *Social Evolution*. Kidd rejected the liberal doctrine of social evolution that centered on the individual as much as he rejected Marxism with its materialist doctrine of progress through class struggle. He believed that human history was driven by the antagonism between the races and peoples. The Anglo-Saxons and the Germans, as members of the "Teutonic race," stood at the top of the racial hierarchy; and the nation would triumph that achieved the highest degree of "social efficiency" by completely controlling its members and redirecting the struggle for survival from within the society outward to create an Empire which could ensure one's own group's permanent survival.

Kidd's social imperialism was still somewhat tentative, but his idea of national efficiency became an effective slogan in the political debate in Great Britain at the beginning of this century. Britain began the century facing diplomatic instability and internal upheaval: the rise of Germany, the difficulties with the Boers in South Africa, and the Irish independence movement all posed military threats. At the same time, Britain needed to confront unrest among the working class and an obvious need for reform of the internal administration.

In response to these pressures, new organizations and intellectual circles arose to mobilize the masses for the empire. One such circle was the *Coefficients Club*, founded in 1902 by Sidney and Beatrice Webb, which assembled Fabians, liberal imperialists,[28] and conservatives. What connected them was their belief in the necessity of efficient and scientifically based politics, social reform, and imperialism. For the Fabians, who had until then paid little attention to the Empire, it was necessary to take a clear stand regarding the Boer war. Against the opposition of a substantial minority, in February 1900, the faction led by the Webbs and George Bernhard Shaw finally won. Shaw was appointed to write an official position paper for the Fabians, and in the same year he published *Fabianism and the Empire: A Manifesto by the Fabian Society*. In this publication, Shaw claimed that "the partition of the greater part of the globe"[29] among the imperial powers was a fact that simply had to be acknowledged,

[28]Including the former prime minister Archibald Philip Primrose, Lord Rosebery, the future secretary of state in the foreign office Edward Grey, and the geographer Halford John Mackinder.

[29]Bernard Shaw, *Fabianism and the Empire: A Manifesto by the Fabian Society* (London, 1900), p. 3.

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regardless of any moral evaluation. As a result, the Fabians would support a policy that took into account not only the interests of one social group but "the effective social organization of the whole Empire, and its rescue from the strife of classes and private interests."[30] Among the prerequisites of an effective social organization the Fabians counted the introduction of universal suffrage; while liberals and conservatives generally rejected this demand, the socialists advocated the passage of legislation according to which male adults should, until age 21, work only 18 hours per week and undergo military training for the remaining 30 hours.

These ideas could hope to find support among those who believed that the British parliamentarism was no longer up to the demands of modern times. In particular, high colonial officers of the Empire who were used to ruling foreign populations—by means of force, if need be—held the view that a real government had to be authoritarian and hierarchically structured. One of those proconsuls was Lord Alfred Milner, the former British High Commissioner for South Africa, who had been recalled by his own government in 1905, when the conditions in the concentration camps for which he had been responsible had become publicly known. Milner had brought his personal following—his "kindergarden"—back from South Africa, and upon his return was considered as the political hope of all those who wanted the traditional political system fundamentally changed. Upon invitation by the Webbs, he joined the Coefficients Club, and eagerly convinced himself of the necessity of combining internal reforms with a popular, mass-supported imperialism. Milner even spoke about a "noble socialism," which was not based on envy and tried to organize the nation as "one body-politic."[31]

The Coefficients Club met until 1908, when it dissolved. The original idea that it would be possible to create a new party of social imperialism and national efficiency out of disappointed liberals, conservatives and socialists had by then become obsolete. The Webbs turned toward the Labour Party, which they had regarded with a certain elitist arrogance until then, and had great influence on its future development. Their enthusiasm for collectivism would lead them later on to laudatory statements regarding Mussolini and high praise for the Soviet Union and Stalin. Grey became a member of the newly formed liberal government, and concentrated on preparing for the war against Germany, which he, like the other Coefficients, regarded as unavoidable. Milner, who was probably the only one qualified to

[30]Shaw, *Fabianism and the Empire*, p. 6.

[31]Alfred Milner, "A political Ishmaelite," in *The Nation and the Empire* (London, 1913), pp. 152–63, here p. 161.

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lead a new political movement, was too poor a public speaker to assume the role of a tribune. With a certain amount of resignation, he later admitted that his idea of a scientifically based paternal despotism had no prospect of success because the masses demanded an agitator.[32] The appearance of such a personality was the last hope, although it could not be ruled out that he might lead the country into ruin.

Milner's political model was the Germany of William II. In this, he agreed with most Empire-socialists and social-imperialists, who admired as much as feared the authoritarian order of the Reich: "The German nation is homogeneous: organised. Their imperial policy is continuous. . . . Their principle is the theory of blood and iron," Blatchford had written and continued: "The German nation is an army. The British nation is a mob of antagonistic helpless atoms."

Concerning this view of German conditions, it was certainly correct that the more conservative social structure of the Reich and the partial integration of the working class accomplished through Bismarck's social policies hampered the development of political movements such as those in England. For instance, the *National Soziale Verein* (NSV), founded in 1896 by Friedrich Naumann, remained without any significance. Naumann's attempt to attract the workers for his "German-national" socialism by taking their interests seriously and demanding their inclusion in the process of political decision making was without success.[33] His ideas about parliamentarization and popular monarchy found as little support as his demand for an expansionist policy and the financing of social reforms. The NSV failed in every election, and was dissolved in 1903. Naumann, with some of his supporters, joined the left liberals. Similarly unsuccessful as the NSV in Germany was the attempt of Enrico Corradini, the leader of the *Associazione Nazionalista Italiana*, to declare his country a "proletarian nation," and to incite the workers to participate with all Italians in the international class struggle for the acquisition of colonies. When Corradini operated with the slogan of "national socialism" in 1910, during the Libyan war, he found a few sympathizers among the working-class leadership, but he failed to attract any lasting support.[34]

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[32]Quoted from Hans-Christoph Schröder, *Imperialismus und antidemokratisches Denken: Alfred Milners Kritik am politischen System Englands* (Wiesbaden, 1978), p. 50; on the hope for a "drummer," pp. 63, 73.

[33]In the first flyer of the NSV its purpose was explicitly stated: "It is the slow but purposeful preparation of a new party . . . for national socialism." Quoted from Dieter Düdung, *Der Nationalsoziale Verein 1896-1903: Der gescheiterte Versuch einer parteipolitischen Synthese von Nationalismus, Sozialismus und Liberalismus* (Munich and Vienna, 1972), p. 63, n 1.

[34]Quoted from Wilhelm Alff, "Die Associazione Nazionalista Italiana von 1910," in Georg Eckert and Otto-Ernst Schüdekopf, eds., Faschismus-Nationalsozialis-

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SOCIALIST NATIONALISM—NATIONAL SOCIALISM

What Corradini, Naumann, or the Fabians meant by socialism had little to do with what the political left had meant by the term. Cosmopolitism and the idea of absolute equality appeared unscientific to them. In this, they could invoke not only Darwinism, which seemed to make an elitist concept of politics necessary, but also the new realist sociology, which was represented around the turn of the century by men such as Max Weber, Robert Michels, Gaetano Mosca, Vilfredo Pareto, and Georges Sorel. Socialism for Corradini, Naumann, and the Fabians was a synonym for increased and intensified organizational integration of the entire nation. They were not concerned with ending the exploitation of men by men, but with preventing social disintegration as a consequence of the process of modernization, so as to strengthen the state for the process of international competition. For them, socialism was to serve and promote nationalism. They wanted to attenuate the antagonism between the classes by partial redistribution and by directing the antagonism outward; they regarded the nation as an integral whole, and the opposition between the bourgeoisie and the proletariat was supposed to be replaced by that between compatriots (Volksgenossen) and strangers (foreigners), or between ruler-nation (Reichsvolk) and helots.

However, neither in Great Britain, Germany, nor Italy did a national-socialist party with a large popular following originate before World War I. In Great Britain, where the conditions were probably most favorable, the parliamentary system overcame the Edwardian crisis, not in the least because the liberal establishment adopted part of the demands of its opponents—imperialism and social reform. Despite, or perhaps because of, its very different social conditions, national socialism first became a mass movement in France. With its military defeat of 1870–71 by Prussia and the overthrow of Napoleon III, France had experienced its last civil war, which ended with the defeat of the Jacobinian left. From then on, Jacobinism stood for the desire for greater social equality and the opposition to bourgeois parliamentarism. The unrest which General Georges Boulanger brought to the country between 1886 and 1888, when he became the leader of a nationalist mass movement that wanted to overthrow the bourgeoisie and lead a war of revenge against Germany, was proof of the strength of the Jacobinian ideology in the minds of many French. However, Boulanger ultimately failed due to his own inability and the lack of clarity of his political goals. The heirs to Boulangism were those members of the French left who—against pacifist and cosmopolitan currents—

mus, *Schriftenreihe des Internationalen Schulbuchinstituts* 8 (Braunschweig, 1964), pp. 7–27, here p. 12.

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held onto the republican militarism and nationalism. In the following years, when the French political system was shaken by numerous affairs, the core of a wider national-socialist movement was formed here.

The idea of national socialism was particularly important in the political life of the writer Maurice Barrès, who, in 1898, became a member of parliament as a Boulangistes. For Barres, nationalism represented the fateful tie of the individual to "soil and blood."[35] The nation was a compulsory collective which would use socialism once it had freed itself of its "liberal poison" and made clear to the worker that he had to fight not against the entrepreneurs of its own country but against the foreign—that is, Jewish—capitalists.[36] For Barrès, national socialism meant the protection of racial unity, integration of the lower classes, and military strength to prepare for the future war against Germany. The *Comités republicain socialiste national*, which had been formed during Barres's election campaigns, did not lead to permanent political organizations, but a part of the French left referred to itself henceforth as *socialiste-nationaliste*. A first attempt to organize this movement was the *Parti National Socialist* (PNS), founded in 1903.[37] Its leader, Pierre Biétry, originally came from the radical left. When he realized that the PNS would not be a success, he and his followers joined the *Fédération National des Jaunes de France* (FNJF), which had existed since 1902. The "yellow" federation of workers, whose undisputed leader was Biétry, became the first proletarian, anti-Marxist mass movement anywhere. Before World War I, it drew 300,000 members. Under the slogan "French workers unite," Biétry wanted to make the proletariat the promoters of a "national renaissance."

The "yellows" propagated national solidarity between workers and capitalists against "internationalist" Jewish finance capital and "internationalist" Jewish Marxism. Their ideas necessitated ideological contact with the nationalists who were organized in the *Action Française* (AF) and who, after the Dreyfus affair, searched for allies in their fight against the republic. Charles Maurras, the leader of the AF, soon recognized that the yellows were far too pragmatic, however. His ideas of a new monarchist-social or socialist-monarchist ideology could be more easily realized in conjunction with the extreme left.[38] Influenced by Sorel's ideas about direct action and the general

[35]See Maurice Barrès, *Scénes et Doctrines du Nationalisme* (Paris, [1902] 1987), pp. 13f.

[36]Quoted from Zeev Sternhell, *Maurice Barrès et le Nationalisme Français* (Brussels, 1985), p. 225 n. 3.

[37]See Zeev Sternhell, *Ni Droite, ni Gauche: L'Ideologie fasciste en France* (Paris, 1987), pp. 83–85.

[38]Sternhell, *Ni Droite*, p. 95.

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strike as a weapon against the liberal system, a group of syndicalists was formed in France in 1907 which considered the labor unions, rather than the socialist parties, as the main force in the proletarian struggle. What led some of its leading figures to join with the nationalists and create a forum of discussion in the *Cercle Proudhon* in 1912 was their common opposition to the bourgeois state and their belief in the role of activist minorities. The plan of a double revolt, represented by nationalists and syndicalists, failed. But even Sorel, encouraged by Maurras, moved increasingly to the right after 1910 (without giving up all of his reservations, however).

In some respects, Sorel's ideas were more successful in Italy than in his own country. Although the number of revolutionary syndicalists remained small in Italy as well, the prospect of a coalition with the new nationalism appeared more promising. One of the leading figures of the movement, Angelo Olivetti, wrote in 1910 in Sorelian spirit: "Syndicalism and nationalism are anti-democratic and anti-bourgeois. And, we say, they are two aristocratic tendencies within a common materialist society. The one tries everything to create an elite of workers, the other promotes the rule of a racial elite."[39] Corradini's vote for a *socialismo nazionale* was in some way the answer to the offer made by Olivetti. Indeed, the united front of syndicalists and nationalists first appeared during the war against Libya. While the syndicalists dreamed of a revolutionary war which would pave the way for a great social transformation, and in any case would instill bravery and discipline in the proletarian masses, Corradini and his followers hoped for the integrating effect of social imperialism, which would not only give recognition to their country but also help overcome the internal division within Italian society. However, the liberal system was still too stable to be shaken. Only after the outbreak of World War I and the debate on Italian participation did these various ideological components gain new meaning and momentum.

By then, Benito Mussolini, a student of Sorel's, had largely adopted the ideas of national syndicalism or national socialism. During the last years prior to the war, Mussolini's rise within the *Partito Socialista Italiano* seemed to be unstoppable. His followers recognized him as the undisputed *duce* of Italian socialism, and at the outbreak of the war in 1914 his political position was so strong that, among all European leaders of the workers movement, only Mussolini could threaten his government with a popular revolt should his country participate in the conflict between the imperialist states. More surprising was his complete turnaround. Already in October of 1914, Mussolini supported a policy of interventionism and demanded that Italy join the war

[39]Quoted from Zeev Sternhell, Mario Sznajder, Maia Asheri, *Naissance de l'idéologie fasciste* (Paris, 1989), p. 224.

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against Austria-Germany. His party did not follow him, but rather excluded him as a traitor. Mussolini managed to retain only his personal followers and kept agitating in favor of Italy's participation in the war. When Italy declared war on Germany and Austria–Hungary in 1915, Mussolini saw himself at the end of his goals. He believed that through the military conflict the missing Italian revolution would finally be achieved. Through victory, one would not only complete the *risorgimento*—the national unification of the 19th century—and join the unredeemed territories—the *irredenta*—to the fatherland, but would also sweep away the old order. A new elite would rise to the top of the state, composed of the *ritornati*, the returning soldiers. Only soldiers who had fought at the front were qualified to create a new, anti-Marxist national socialism based not on theory but on the experience of war.

Mussolini's high expectations were not fulfilled, though. Italy's hope for large territorial gains were dashed in the course of the reorganization of Europe negotiated in the Paris suburbs in 1918–19, and the Russian October revolution created an unexpected rival in the communists. When Mussolini, in March 1919, formed the *Fasci di Combattimento* out of former soldiers, nationalists, and socialists, these fighter associations were not only supposed to "defend and preserve the victor" but also to prevent a world revolution on Italian soil. Fascism was directed against communism, which threatened Italy with revolution, but it did not stand on the side of the reactionaries. The fascists, too, demanded a government of worker councils, the expropriation of industry and *latifundia*, and the elimination of the influence of church and monarchy. Initially, they competed as national socialists both against revolutionary Marxism, which was similar in its violence, primitivism, and strength of emotions, and against collectivism, and its belief in a post-bourgeois age inhabited by a "new man."

CHRISTIAN-SOCIAL, GERMAN-SOCIAL, AND NATIONAL-SOCIALIST

Hitler identified himself with Mussolini only after the success of the fascists in Italy, yet he always looked with respect upon the intransigence of French nationalism. The analogy between the French situation after 1871 and the German after 1919 was evident to him, as it was for many contemporaries. Pre-war Germany did not offer any opportunities for movements such as Boulangism or ideas such as those of Barrès, however. This was not only due to the stability of the monarchical system, but also because of the Marxist background of the working class. The beginnings of the national-socialist movement—weak in comparison to England, France and Italy—occured under entirely

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different circumstances. In the wake of the depression, which brought the economic expansion of the founding era to a halt in 1873, antisemitism became a political factor in Germany. Initially it was only isolated individuals who, in articles and pamphlets, advocated an ideology which tried to combine the older religiously motivated anti-Judaism with hints of a new type of racially based antisemitism. The antisemites knew that they owed their rise to the economic crisis, and they catered to the petty bourgeosie and their economic fears. However, their success was rather limited.

Only the *Christlich-Soziale Arbeiterpartei,* founded in 1878 by the court priest Adolf Stoecker, provided an organizational basis for such political agitation, but it quickly faltered because Stoecker did not want to cut ties to the traditional political right, the conservative party, and could not reach the proletariat. Subsequently, a new movement emerged, entirely independent of the conservatives, whose attraction consisted largely in the fact that men such as Otto Boeckel and Hermann Ahlwardt replaced the wooden royalism and state-supportive attitude of the conservatives with popular political advertisement and sharp polemics. Their success also helped the *Deutsche Reformpartei,* which had existed since 1881, and the *Deutsch-soziale Partei,* founded in 1889. Apart from the fight against the Jews, these antisemitic parties had little in common. They did, however, share some political emotions that were directed against the "Jew-protection troops"—that is, the left liberals and the social democrats—as well as the "Cohnservatives." Some antisemites called for the violent overthrow of the rule of the "Junkers and Jews" and a "German-national" reorganization of the economy. This socialist propaganda was taken seriously, and led some conservatives to predict that in the future antisemitism would "turn against property as such, and become a variant of social democracy."[40]

Objectively, this danger hardly existed, however. The extent of political antisemitism decreased in Germany until the turn of the century. In contrast, a German-national or all-German movement, which effectively combined the call for the unification of all Germans within one state with a slogan of the fight against "Jewish rule," emerged first during the Habsburg Empire. The origin of this movement had as its reason the disappointment of many Austrians following their exclusion from German unification in 1871. Georg Ritter von Schönerer, a former liberal whose his most militant followers were among student corporations (fraternities), athlete associations (Turnerschaften), and the Germans in Bohemia and Moravia, rose to become their leader. While Schönerer was not a national

[40]Julius Graf von Mirbach-Sorquitten, Quoted in Walter Frank, *Hofprediger Adolph Stoecker und die christlichsoziale Bewegung* (Hamburg, 1935), p. 235.

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socialist, he held views that were close to those of pre-war national socialism: "Nationalism must be considered a higher principle than socialism, and must not be manoevered into opposition against it but rather, in renouncing all corporatist and class interests, try to incorporate the just demands of socialism. Once nationalism has thus absorbed and integrated socialism, then clericalism and liberalism will be but pale shadows in contrast to the light that it sheds on the world."[41]

Schönerer's rather tentative attempt to integrate nationalism and socialism was also related to the German-national workers movement that had emerged in Bohemia as a result of the conflict between German and Czech workers. Already in 1885, in reaction to the immigration of Czechs who worked for lower wages, union-like associations of German workers were formed. After the disintegration of the Schönerer movement due to internal frictions, these associations were left alone, and a long-standing plan—to found a German national workers party—found increasing support. The model of the *Czech National-Socialist Party*, which had separated from the Social Democrats and was founded in 1896, played an important role, and in 1904, in Aussig, the founding party congress of the *Deutsche Arbeiterpartei* (DAP) (German Workers' Party) took place.[42] Like the Czech National Socialists, the followers of the DAP were anticlerical, antifeudal, and anticapitalist. They combined the idea of a progressive collectivization with the rejection of the idea of class struggle which would make the destruction of the Habsburg monarchy even more difficult and be an impediment on the way to the establishment of a national-socialist German Empire. Even at the founding of the DAP, the idea to name the party "national socialist," or "national-social," or "German-social" had come up. However, no majority existed for this proposal. Nonetheless, it was clear that the DAP, with its program accepted on August 15, 1904 in Trautenau, belonged to the small number of pre-war national-socialist parties. In addition to fielding calls that could be expected for an all-German association in Austria, it contained a catalogue of radical-democratic and social measures. Representatives of the DAP demanded the abolition of the upper house (Herrenhaus), the complete separation of state and church (also in the field of education), the democratization of the military, the introduction of universal suffrage, equality of women, the restriction of working hours and legislation for the protection of workers, and the abolition of child labor and unhealthy-women labor. Large firms should be collectivized.

[41]Quoted from Alois Ciller, Deutscher Sozialismus in den Sudentenländern und der Ostmark, *Schriften zur Geschichte der nationalsozialistischen Bewegung* 1 (Hamburg, 1939), p. 51.

[42]On the entire context see Andrew G. Whiteside, "Nationaler Sozialismus in Österreich vor 1918," *Vierteljahreshefte fuer Zeitgeschichte* 9 (1961): 333–59.

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As a result of the national election in June 1911, for the first time the DAP was represented in the central parliament with three seats. The DAP representatives joined the German National Association (Deutscher Nationalverbund) but remained an alien element within this bourgeois environment. The vote on the military budget in 1912 led to a split. In light of growing social problems, the party did not want to support a higher military budget. At its party convention in September 1913 in Iglau, an addition to the program was accepted that emphasized more strongly than before the party's working-class orientation. This move to the left did not prevent the party leaders from increasingly sharp polemics against the Social Democratic and Jewish power; however, only the DAP would recognize the "maliciousness of the internationalist doctrines for the German people and the dishonesty of the Social Democrats, led by Jews and in cahoots with the mobile finance capital."[43]

The outbreak of World War I disrupted further development and fundamentally altered the political situation of the Austrian national socialists. Most DAP parliamentarians were drafted into the armed forces, and parliamentary work was suspended until May 1917. When the parliament reassembled, the DAP was largely concerned with internal disputes. Since the summer of 1916, debates had continued regarding a new name for the party, and in May 1918, the delegates to the Vienna party congress decided to change the name to *Deutsche Nationalsozialistische Arbeiterpartei* (DNSAP). The DNSAP accepted the old DAP program by and large, but also demanded "the unification of all European territories settled by Germans into one democratic, social German Empire."[44]

The idea of the Austrian national socialists for a new all-German state was at this time still founded on the hope for a victorious peace. A few months later this perspective had changed entirely, and in late October 1918, in light of the disintegrating Habsburg Empire and military defeat, the party demanded that Germany and German-Austria combine to form a German Empire and be turned into a "free, social All-Germany." The dissolution of the Austrian-Hungarian monarchy resulted in the formation of a German-Austrian, a German-Czech and a German-Polish branch of the recently founded DNSAP. While in Polish Silesia the national socialists were only a temporary phenomenon, in Bohemia and Moravia the DNSAP, in conjunction with the *Deutsche Nationalpartei*, was a force to be reckoned with. It was here that the party had its

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[43]Quoted from Francis L. Carsten, *Faschismus in Öesterreich: Von Schönerer zu Hitler* (Munich, 1978), p. 107.

[44]Quoted from Rudolph Brandstötter, *Dr. Walter Riehl und die Geschichte der nationalsozialistischen Bewegung in Österreich* (Vienna, 1969), p. 131.

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roots, whereas the national socialists in the newly founded Austrian republic—although they had survived the collapse—first had to take hold. This turned out to be even more difficult because they had hoped for swift unification with the German Empire, and now they saw themselves confronted with rather different conditions. In addition, the leaders of the German-Austrian and the German-Czech party became entangled in ideological conflict.

The conflict was over the party program's central ideas of democracy and socialism. While the Austrians around Walther Riehl wished to hold on to a parliamentary system and advocated state socialism that resembled traditional revisionist social-democratic ideas, the influential German-Czech national-socialist Rudolf Jung held the opinion that democracy was an obsolete social order and should be replaced by a corporatist social structure and an elitist leadership. Jung, as many other National Socialists from Bohemia, was a follower of Dühring, and in his book *Der nationale Sozialismus,* published in 1919, he propagated an authoritarian Führerstaat based on racial homogeneity that would assume the fight against Judaism in its new form—Bolshevism. Jung opposed colonialism but advocated the occupation of new territories "in the east" for "social imperialism."[45]

HITLER'S NATIONAL SOCIALISM

Not one of the mentioned socialist-nationalist, national-social, or national-socialist movements achieved great success in the pre-war era. Their ideologies, neither unambiguously left nor right, were without prospect of success so long as the political framework inherited from the French revolution remained intact. The war changed the bourgeois order and the clear distinction between a conservative right, a liberal middle, and a radical democratic-socialist left. World War I thus assumed the same significance for the 20th century as the French revolution had for the 19th; the events between 1914 and 1918 swept away the old order, both internally and externally. They brought about a mass society and changed the international order as a result of the U.S. participation in the war and the emergence of the Soviet Union. New ideologies, the liberal democracy of the West and Russian Bolshevism, tried to attain global political hegemony and for a brief period appeared to succeed in doing so. However, during the early 1920s an alternative to "Wilson or Lenin" was offered in the form of the national-socialist position.

This alternative gained particular attraction in the militarily defeated, politically torn, and internally and externally threat-

[45]Brandstötter, *Dr. Walter Riehl und die Geschichte*, p. 17.

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ened Germany. Between November 1918 and June 28, 1919, the day when the Versailles treaty was signed by the German delegation, uncertainty reigned with regard to the future development. But there was a widespread feeling that a radical break with the past was unavoidable. Religious ravings, revolutionary energies, the thesis of the "Decline of the West," and the drive toward heroic self-sacrifice all found adherents. The atmosphere was hysteric and productive, and ideas that previously had seemed incompatible were now combined: Christianity and anarchism, ecstatic dance and communist revolt, conservatism and revolution, nation and socialism. To many Germans, national socialism appeared well suited as a basis on which to evaluate their positive experience with war socialism—the cooperation between High Military Command, labor unions, and business—and overcome the severe economic problems left by the war and effectively concentrate popular energies in the face of defeat. Moreover, national socialism would allow the continuation of the uniquely "German way," in between and beyond the capitalist West and its unconstrained individualism and the bolshevist East and its collectivism and barbarism. This is what the philosopher Max Wundt meant when he wrote that the German ideology of the future would be "National rather than international, men rather than masses, socialism rather than capitalism."[46] Similarly, Oswald Spengler wrote about the need for "Prussian Socialism," Arthur Moeller van den Bruck about an "organic socialism," and Paul Tafel about a "German" or simply "national socialism."

This first national-socialist wave in post-war Germany made the attraction of the idea obvious, but it did not lead to an effective organization. Only a few Social Democrats—such as Paul Lensch, Johann Plenge or August Winnig[47]—expressed their national-socialist sympathies. Rather, the slogan of national socialism was adopted by the nationalists (Völkischen), which experienced an unexpected upswing from 1918 until 1922. Hitler later correctly characterized the development as follows: "The same idea and the same need created the same movement in all corners of the Empire. We were of course independent of each other. In Düsseldorf they did not know that the same things went on in Munich, and we in Munich did not know about events in Kiel, and this path toward the solution, which we found, shows that the programs, while developed independently of each other, ultimately all said the same."[48] With this remark about Düsseldorf and Köln, Hitler had referred to the

[46]Quoted from Albrecht Tyrell, *Vom 'Trommler' zum 'Führer': Der Wandel von Hitlers Selbstverständnis zwischen 1919 und 1924 und die Entwicklung der NSDAP* (Munich, 1975), p. 21.

[47]See Rolf Peter Sieferle, *Die Konservative Revolution* (Frankfurt/M., 1995), pp. 70f.

[48]Quoted from Ciller, *Sozialismus*, pp. 144f.

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Deutschsozialistische Partei (DSP) of the engineer Alfred Brunner, which had been founded around the turn of 1918–19 as a "party free of Jews and capitalists," and which organized local party groups in North and West Germany in close cooperation with Austrian national socialists. The DSP was still largely rooted in the antisemitic tradition of the pre-war era, however. It did not develop an effective mass propaganda machine and never grew beyond a few thousand members. By 1922, it was completely absorbed by Hitler's *Nationalsozialistische Deutsche Arbeiterpartei* (NSDAP), which managed to incorporate by the end of the 1920s all older antisemitic associations and groups. Essentially, from then on, no form of national socialism existed in Germany except Hitler's.[49]

In the summer of 1921, one and a half years after he had joined the insignificant *Deutsche Arbeiterpartei* in Munich, Hitler assumed party leadership. This position fell to the former soldier who, without training and position, had decided to became a professional speaker because of his extraordinary oratorical and demagogic skills. His ideological concepts were hardly original and did not differ from those that had been propagated by the radical right since the beginning of the Weimar Republic. Hitler proclaimed his adherence to the national community of all Germans and demanded the revision of the Versailles treaty. At the core of his ideological system was a social-Darwinistic interpretation of history. The races were the promoters of all historical developments for him, and the competition between the Aryans and the Jews was the center of a permanent race stuggle. As a German national socialist, he wanted to see all war profiteers and the Jewish "grab-capital" expropriated so that the working class could finally be integrated into the national community (Volksgemeinschaft) led by the front soldiers.

Early in 1921, some changes could be noticed in Hitler's argumentation. Until then, with the call for the disempowerment of the Jews, he represented the traditional antisemitic position. Now he began to emphasize the role of the Jews as organizers and beneficiaries of the Russian revolution and the world threat of Bolshevism. Under the influence of the writer Dietrich Eckart and the German-Baltic journalist Alfred Rosenberg, Hitler reached the conclusion that the Bolshevik revolution represented a "Jewish dictatorship," and that Germany would "sink into a Bolshevik swamp of blood" unless appropriate countermeasures were taken by a dictatorial regime.[50] In order to reach the goal of a national dicatorship, Hitler formed an alliance with

[49]See Helmut Heiber, *Adolf Hitler: Eine Biographie* (Berlin, 1960), p. 157.

[50]Adolf Hitler, "Der völkische Gedanke und die Partei," *Völkischer Beobachter* (January 1, 1921); quoted from Eberhard Jäckel and Axel Kuhn, eds., *Hitler: Sämtliche Aufzeichnungen 1905-1924, Quellen und Darstellungen zur Zeitgeschichte* 21 (Stuttgart, 1980), p. 279 [document 178].

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other groups of the revolutionary right, but his "March on Berlin," planned in accordance with the model of Mussolini's "March on Rome," failed and his *putsch* of November 1923 broke down when the conservative Bavarian government mobilized the army and the state police. The NSDAP was outlawed, and Hitler was sentenced to a five-year prison term. Hitler later referred to his prison time as a "university education at the state's expense,"[51] because during the months of his imprisonment he engaged (probably for the first time) in systematic reading and study. The forced leisure also afforded the opportunity to dictate his memoirs, the first volume of which appeared in 1925 under the title *Mein Kampf*. In the manuscript, Hitler attempted to present his ideology as a systematic whole. And while it cannot be demonstrated conclusively that Hitler was familiar with the ideas of the national-socialist theoreticians of the pre-war era, the similarities are obvious.

Essentially, Hitler concentrated on three themes: race theory, national socialism, and living-space (Lebensraum) imperialism. Hitler's idea about the need for "purity of blood" had little to do with mysticism but rather with the fear of all social Darwinists concerning the "regression toward the mean."[52] He defined the Aryan essentially by one characteristic, his "greatest contrast" to the Jew. The "Jewish question" was the center of the race question for him, and the Jew was as much a hated as admiringly feared enemy. He not only considered the Jews as parasites and destroyers of culture, but he also suspected that they preserved a unique purity of blood while, under the cover of humanitarian phraseology, they planned the bastardization of their "host people"[53] in order to gain a decisive advantage in the race struggle that would determine the "progress of mankind."[54] As for many national socialists of the pre-war era, socialism for Hitler stood in direct connection to this race struggle. Only the elimination of all remnants of the bourgeois class society would mobilize the nation's energies for the upcoming conflicts. His socialism had as little to do with humanitarian concerns as did that of Barrès, Pearson, or Woltmann. Hitler was a socialist because he believed the proletariat possessed "primeval energies"[55] that would aid in regenerating the decadent upper class and once again make the Germans a "people of brutal willpower," which was necessary for survival in the "natural order of power."[56]

[51]Quoted from Ernst Deuerlein, ed., *Der Aufstieg der NSDAP in Augenzeugenberichten* (Munich, 1982), p. 241.

[52]See Rolf Peter Sieferle, "Sozialdarwinismus," in Bodo-Michael Baumunk and Jürgen Riess, eds., *Darwin und der Darwinismus* (Berlin, 1994), pp. 134–42.

[53]Adolf Hitler, *Mein Kampf* (Munich, 1937), p. 357.

[54]Hitler, *Mein Kampf*, p. 286.

[55]Hitler, *Mein Kampf*, p. 364.

[56]Hitler, *Mein Kampf*, p. 148.

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Like most social Darwinists, Hitler thought wars were natural, and that nature, the "cruel queen of wisdom,"[57] provided for the merciless selection of the strong through elimination of the weak. Socialism, the negative selection of the "inferior," and the exclusion of the Jews all served the same purpose: the construction of a natural order which would survive in the natural conflict between powers. Which state constitution would be suited to achieve this goal Hitler left open; he had little interest in questions of constitutional details. The explanations in *Mein Kampf* about Germanic democracy and later about the leader principle (Führerprinzip) remained general and abstract. It was only clear that the national-socialist state would have to be authoritarian and that Western democracy could not assure the self-preservation of the Aryan people. Western democracy was a sign of decadence because it was commited to anti-selectionist principles and unable to assure the selection of an elite in accordance with racial-national ability.

Hitler knew that his goals could not be accomplished within the existing political system. He was not interested in defending any particular state organization. Mentally he belonged, like most national socialists, to the revolutionaries rather than the conservatives. However, after the failed *putsch* of 1923, he realized that in modern societies classical revolutions could only succeed under exceptional circumstances and would be problematic even then, for they would lead to irreparable losses of human substance. The promoters of the revolution would have to be a "path-breaking minority,"[58] a political elite of disappointed extremists, men of the extreme right and the extreme left joining the national-socialist party. The NSDAP should not mobilize the "herd of bourgeois voters"[59] but constitute the hard core of a new movement which—under the cover of legality—would try by all means to reach power.

Once this goal was attained, the system would have to be replaced by a national-socialist state whose main task was the shaping of a new German man. Although Hitler believed that a lengthy period of time was necessary to reach this end, he spent considerable energy in *Mein Kampf* explaining the basic principles of his long-range foreign policy plans. Central to this was the necessity of destroying the alliance between the victorious powers of the war, and drawing Italy and above all Great Britain into the German camp. The support of the "Germanic brother nation" was critical in order to gain a free hand for an active East policy. Hitler believed that the social integration of all members of the national community would lead to considerable costs which—in light of shrinking markets—could not be

[57]Hitler, *Mein Kampf*, p. 144.
[58]See Jäckel and Kuhn, *Hitler*, p. 708 [document 412].
[59]Hitler, *Mein Kampf*, p. 375.

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borne by internal economic growth. Thus, the conquest of living space in the East would serve to provide not only the food supply for a growing nation but also the economic basis for uncompromising social imperialism. Theoretically, this problem could also be solved by the acquisition of overseas territories, but Hitler considered the possession of regions adjacent to the territory of the German Empire geopolitically advantageous for improving Germany's military and strategic power in future wars. That any German attempt to reach this goal would inevitably lead to a conflict with the Soviet Union was something that Hitler not only accepted but welcomed. This would make probable an all-decisive battle against the Jewry, because Bolshevism was not just a hostile ideology. The political system of the Soviet Union represented also the "open dictatorship" of the Jewry.[60]

When Hitler developed these ideas in *Mein Kampf* in the mid-1920s, he seemed further away from the realization of his plans than ever. His failed attempt to copy Mussolini's grasp of power condemned him on the one hand "not to shoot but to vote his enemies dead," and on the other hand it determined and defined the relationship between German Nationalsocialism and Italian Fascism for more than ten years. Both movements were closely connected but by no means identical. Their sociopolitical environment and ideological emphases were distinctly different. Thus, occasionally Hitler stressed the national-socialist content of fascism[61] and simultaneously criticized its lack of consistency that frequently led Mussolini to compromise and moderation despite his verbal radicalism. The March on Rome of 1922, a mixture of propaganda coup and revolutionary threat, had been successful only because the fascists could count on the tacit support by the old elites and the sympathy of large numbers of the army and police. Thus, the regime which Mussolini implemented in the following years little resembled his older national-socialist ideals. He did not touch on the monarchical order, the relationship to the Vatican was stabilized, and the economic order remained essentially unchanged despite some corporatist reforms. Mussolini took a mediating position between his conservative coalition partners and the radical forces within his own party, the *squadristi*. Totalitarian features, such as the legal prohibition of opposition parties and the latent terror by the secret police, appeared only after the mid-1920s, and there was not a system of concentration camps, nor any plan to annihilate any part of the Italian population. What separated the fascists from traditional authoritarian regimes was their will and desire to be popular and the principle of mass mobilization. The

[60]Hitler, *Mein Kampf*, p. 357.

[61]Adolf Hitler, "Vorwort zur deutschen Ausgabe," in Vincenzo Meletti, *Die Revolution des Faschismus* (Munich, 1931), pp. 7f.

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party, the militia, and the youth organizations served above all the purpose of ideological instruction and the preparation of those great shows for which Mussolini had a special talent. Combined with the beginnings of a fascist welfare state, these forms of direct and unmediated integration contributed significantly to the popularity of the regime, and by the mid-1930s there was practically no opposition which could hope for widespread support. With some justification, Renzo de Felice speculated that if Mussolini had avoided entering the war, the fascist system would probably have lasted in a somewhat modified form until today.[62]

THE THIRD REICH AND THE BROWN WELFARE STATE

Although no Fascist International was ever founded and Mussolini doubted that fascism could be exported, with the March on Rome a number of smaller movements which called themselves fascist or were with some justification so labeled arose. Neither the Romanian *Legion Archangel Michael* of Corneliu Z. Codreanu, the Finnish *Lappo-Movement* under the former general chief of staff Kurt Martti Walenius, nor the Austrian *home-militias* (not to speak of such peripheral movements as the *British Fascisti* and the *Faisceau* of the French Georges Valois) succeeded in coming to power as Mussolini did. These groups were not simply copies of Italian fascism. They differed widely ideologically, and their commonality consisted only in their political style, the "wish to wear a colorful shirt,"[63] their militancy, and their common enemies—Marxism and liberalism. When, in October 1930, Hitler stated that the communist threat could be eliminated solely by eliminating parliamentary democracy and the "fascistization of the European states," this was largely a propaganda slogan. The economic depression had given a boost to all in the widest sense fascist movements, but nowhere in Europe did they become decisive factors. Only the success of the "national revolution" in Germany would lead to a second national-socialist wave in the period between the wars. The victory of the NSDAP in Germany was due to Germany's unusual situation as a defeated and, as a result of the Versailles treaty, a permanently humiliated country, and in particular to the great crisis of the liberal system that had affected not only the economy but the constitutional order and foreign policy of the European and Europeanized states. This crisis made the idea of a national socialism appear increasingly attractive in that it appealed to the "anticapitalist yearnings"[64] of the masses and the

[62]Renzo de Felice, *Der Faschismus: Ein Interview* (Stuttgart, 1977), p. 64.

[63]Ernst Nolte, *Der Faschismus von Mussolini zu Hitler: Texte, Bilder und Dokumente* (Munich, 1968), p. 157.

[64]Quoted from Martin Broszat, "Die Machtergreifung. Der Aufstieg der NSDAP

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widespread belief that economic isolation and protectionism would lead to a healthier economic basis.

When it became clear to Hitler that the normal fascist way to power was closed, he successfully reorganized the National Socialists as an omnibus or catch-all party. As can be seen from the composition and organization of party members and voters, by the end of the 1920s the NSDAP had become a populist protest party whose platform played only a minor role.[65] The all-classes encompassing integration of its followers was due to the charisma of the Führer and the modern means of mass propagandizing. The mobilization of the masses was achieved in particular through the promise of national and social regeneration. Important but unpopular elements in Hitler's ideology—the racist antisemitism and the conquest of living space—were deliberately deemphasized or left unmentioned. In light of this fact, it was not to be expected that after rising to government power on January 30, 1933, the National Socialists would engage in decisions that would threaten their support among the masses. The fate of the unpopular governments of Brüning, Papen, and Schleicher was before Hitler's eyes, and the "Caesarist" structure of the new government, which was only gradually stabilized, required sound popular support. Hence, there were constant appeals for a national community (Volksgemeinschaft) and for a "social revolution aimed at modernization."

Social modernization was by no means contrary to Hitler's intentions. In fact, "Hitler not only welcomed the process of industrialization and the increase in social mobility, he consciously promoted this development."[66] The new strength that the regime gave to the economy was by no means restricted to preparation for war. Rather, Hitler promoted the development of an infrastructure (the construction of canals, expressways, airports, and the electrification of railroads) and the systematic modernization of industries. Taylorism, originally opposed for ideological reasons, was now introduced. The DINTA—the German Institute for Technical Work Organization—was concerned with the training of future managers and problems of efficiency and productivity along the lines of American models. It would be incorrect to speak of ideologically motivated preferential treatment of agriculture. The organization of the "estate of the farmers" (Reichsnährstand), which best corresponded to the official propaganda of "blood and soil," was subject to technocratic reforms at the end of the 1930s, when it had become

und die Zerstörung der Weimarer Republik," *Deutsche Geschichte der neuesten Zeit* 16 (Munich, 1993), p. 495.

[65]Jürgen Falter, *Hitlers Wähler* (Munich, 1991), p. 364.

[66]Rainer Zitelmann, *Hitler. Selbstverständnis eines Revolutionärs* (Stuttgart, 1989), p. 495.

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clear that traditional agriculture was unable to fulfill the demands for autarky. After all attempts to stop the process of urbanization had failed, the mechanization of agricultural production was promoted on a large scale. Hitler accepted the modern view that the goal of the economy was the improvement of the general standard of living. Investment in consumer-goods industries fell behind investment in military production but was nonetheless extensive and contributed considerably to the Americanization of the German lifestyle in the the 1930s.

The decisive reason for the stability of the regime was the elimination of unemployment, however. Even if the 1933 job-creating programs had much to do with war preparation, they still had an extraordinarily strong effect on the German social structure. While the German workers lost some participation-rights under the NS regime and, on the average, until 1939 had to work longer and for lower pay than in the Weimar Republic, the general economic conditions still appeared significantly better—more stable and less crisis-prone—than during the 1920s. The entrepreneurs, many of whom had feared "brown Bolshevism," were disaffected by the egalitarian tendencies of the NS regime and the "Four-Year Plan" and the "Defense-Economic-Production Plan." Yet, they gave in to Hitler and Göhring when they were threatened that militarily important industries might be nationalized, and they profited handsomely from the government's economic and job-creating programs during the 1930s. Similarly ambivalent was their assessment of the *Deutsche Arbeitsfront*, the compulsory organization of workers and employers whose leader, Robert Ley, planned to create a national-socialist welfare state with full employment, guaranteed work-time, wage justice (also for women), mother protection, universal health insurance, organized mass tourism (Kraft durch Freude), and a dynamic old-age pension system.

In fact, there was no break in the tendency toward the modern welfare state in Germany during the NS era. Likewise, especially in light of the war destruction, the National Socialists increasingly gave up their initial reservations regarding cities and city life, and engaged in regional planning by promoting the development of pre-fabricated housing construction and large-scale public housing. In accordance with the goal of modernization was also the design of a new "national state," wherein each member would have equal opportunities. Thus in 1943, Goebbels could say with some justification: "We Germans did not become equal in rights and obligations but equal in opportunities."[67] Indeed, vertical mobility in peace time doubled as compared to the last six years of the Weimar Republic. In particular, in the parallel structures of the party apparatus it was

[67]Quoted from Hans-Jürgen Eitner, *Hitlers Deutsche: Das Ende eines Tabus* (Wiesbaden), p. 297.

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possible to reach leading positions without otherwise necessary requirements (such as *matura* or university study). Not all economic barriers were broken down within the education system, but the new "elite schools" of the regime did in fact recruit far more children from the lower social strata than did traditional educational institutions.

There can be little doubt that these elements of national socialism contributed much to integrating the population in the system. Neither passive acceptance nor permanent terror can explain the durability that the NS regime displayed during war time. And neither the euthanasia program, nor the mass extermination of Jews, can be separated or isolated from this connection. Their ideological justification was based on social Darwinism and race theory, which belonged to the ideological core of practically all national-socialist variants. Hitler and his executives were convinced of their scientific basis. Both—euthanasia and the murder of Jews—were not the result of some irrational destructionism but rather of the necessity of an active population policy. They were motivated by "planning and practice-oriented rationalism that tended to shake off all moral constraints and found a perfect environment in national socialism" that wanted to eliminate "useless eaters" and parasites (Volksschädlinge) so as to increase the fitness of the nation which, in case of a conflict, could not tolerate any internal strain or enemy.[68]

THE WORLD WAR AS A NATIONAL SOCIALIST REVOLUTION?

That national socialism also possessed considerable appeal outside the German borders was not because of a knowledge or acceptance of its destructive program. To foreign admirers, the NS regime installed in 1933 appeared more modern than Italian fascism, less compromised by remnants of the bourgeois order, more efficient, more social, and indeed equidistant from capitalism and communism. National-socialist parties emerged in Holland under the leadership of Anton Adriaan Mussert, in Flanders under Staff de Clercq, in Norway under Vidkun Quisling, in Romania under Horia Sima, and in Hungary under Ferenc Szalasi. The *Falange* movement of the Spaniard Jose Antonio Primo de Rivera, and Patrick O'Duffy's *Blueshirts*, which had grown out of Irish-republican radicalism, also belonged to this group. They were unable to gain power on their own, but in Latin America at least two regimes emerged which can be

[68]Götz Aly and Susanne Heim, *Vordenker der Vernichtung: Auschwitz und die Pläne für eine neue europäische Ordnung* (Frankfurt/M., 1993), p. 19. For a critique of the work by Götz and Heim see Dan Diner, "Rationalisierung und Methode," *Vierteljahreshefte fuer Zeitgeschichte* 40 (1990): 359–82.

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counted as national socialist in the interwar period, even though the social conditions there were significantly different from those in Europe. The first was the *Estada Novo* (1930-1945) of the Brasilian president Getulio Vargas. Vargas conducted a policy that was based on support by the masses and the military and which was directed against the power of the U.S. and the economic influence of the upper class. Vargas's followers, the movement of the *Integralistas* (which he later dissolved), resembled in its program the *Shirtless* of the Argentinian president Juan Domingo Peron who, at least during the beginning of his reign (1943–55), openly invoked Mussolini and Hitler and imposed his "fascism of the under-class" against the resistance of the old elites.[69]

The pronounced leftist tendency of these two regimes[70] was by no means atypical of the national socialism of the 1930s. There were numerous socialists who followed Mussolini's path. One of them was Oswald Mosley. Mosley had started his political career as a conservative, yet he won his first mandate in 1918 under the flag of "social imperialism."[71] The resemblance of his ideas to the Fabians from the pre-war era was no accident, and when Mosley, annoyed by the attentism of the old parties, became a member of the Labour Party in 1924, he developed a program—a combination of Empire-autarky, planned economy, and job-creation programs—which was "genuinely national-socialist."[72] Shortly after he became a cabinet member in 1929, he presented a manifesto to the other government members in which he once again concretized his ideas. When he encountered rejection and did not succeed at the 1931 Labour Party convention, he left the party and founded the short-lived New Party. If one relies on his memoirs, Mosley was inspired in this step by Shaw, with whom he had a personal friendship and who also influenced his elitism and Nietzschean ideas about the importance of great men.[73] Only after Mosley acknowledged that his New Party would be unable to break the power of the *old gang* did he model his ideas increasingly on Mussolini and Hitler. In October 1932, he founded the British Union of Fascisti which, despite its name, sympathsized more with national socialist Germany and, after some hesitation, he also adopted its antisemitism. The *Blackshirts* were not initially a marginal

[69]See Ernst-Otto Schüddekopf, *Bis alles in Scherben fällt: Die Geschichte des Faschismus* (London, 1973), p. 212.

[70]Eric J. Hobsbawm, *Das Zeitalter der Extreme: Weltgeschichte des 20. Jahrhunderts* (Munich and Vienna, 1995), p. 175; the Marxist historian summarizes: "the fascist regimes in Europe destroyed the workers movements; the Latin-American leaders, inspired by the European fascists, founded the workers movements."

[71]See Semmel, *Imperialism*, p. 248.

[72]Ernst Nolte, *Die faschistischen Bewegungen* (Lausanne, 1969), p. 282.

[73]See Sir Oswald Mosley, *Weg und Wagnis: Ein Leben für Europa* (Leoni, 1973), pp. 180–82.

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movement. Their membership rose dramatically until 1935, and they received substantial financial support. One of the most influential publishers of the country, Lord Rothermere, followed Mosley's political activities for some time with unconcealed sympathy. That Mosley's national-socialist movement ultimately failed was not only because most Englishmen had little taste for the fascist style, but in particular because of the strength of the conservative government which had ruled the country since 1931, and the gradual recovery of the economy.

Very different was the political situation in France, which was in a permanent crisis beginning early in the 1930s. Here the former "crown prince" of the communist party, Jacques Doriot, and the former secretary of the socialist members of parliament, Marcel Déat, followed Mussolini's example. Out of disappointment about the lack of willingness of the PCF to form a pact with the parties of the moderate left against fascism, Doriot had left the party and attracted the support of one segment of the French working class for his *Parti Populaire Française*, founded in 1936. However, as soon as he had accomplished his original goal in the form of the "popular front," Doriot's view fundamentally changed. He came to the conclusion that the republic would not be able to survive, and that France, in order to put it back on the foundation of 1789, needed a "national and social revolution."[74] While Doriot constantly warned of the danger of German aggression, he praised the NS regime for its labor policies and attempts at economic autarky, and the PPF—as a leadership party with party members in uniform—would not deny the German model and inspiration.

In their basic views, Doriot's and Déat's ideologies were quite similar. Déat and other SFIO members of parliament had left their party because they opposed the indecisiveness of the party leadership. His neo-socialists were quickly suspected of being fascists, although initially without reason. Yet the *neos* represented a picture of socialism which differed significantly from that of the rest of the left insofar as it wanted to replace the triad "liberté-égalité-fraternité" with the entirely different one of "order-nation-authority." They did not consider fascism as a handyman of the reactionaries and capitalists but as the inevitable reaction against the decadence of the liberal system: "Fascism is put on trial, but the trial is unjust because fascism was born everywhere of the disease of democracy."[75]

Déat's ideas about neo-socialism were heavily influenced by the works of the Belgian socialist leader, Hendrik de Man who, beginning in the mid-1920s, had propagated the necessity of

[74]See Dieter Wolf, *Die Doriot Bewegung: Ein Beitrag zur Geschichte des französischen Faschismus* (Stuttgart, 1967), p. 222.

[75]Quoted from Reinhard Schwarzer, *Idee und politische Wirklichkeit bei Marcel Déat* (Pfaffenweiler, 1987), p. 222.

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overcoming the reformism of the workers movement while at the same time sharply rejecting the Bolshevist model. De Man demanded a complete discarding of internationalism and a concentration on "socialism in one country."[76] A comprehensive economic plan, "as an expression and symbol of the new phase of socialist action,"[77] would have to detail the measures needed for such a revolutionary transformation. The plan should prepare for the socialization of all suitable firms, but de Man opposed complete socialization. Rather, he was convinced that the free market should be kept in place wherever monopolistic economic structures were still lacking.

De Man's views had striking resemblance to other ideas about planned economies that had been implemented in the 1930s in industrialized countries. In most cases, it was a combination of Keynesian models with moderate autarky as pursued by the United States in relation to Latin America, and by Great Britain and France in relation to their overseas territories. However, with his idea that "planism" should create a new attachment of the masses to the national state, de Man came very close to ideas which can be classified as national socialist, indicating once more that Hitler's movement and regime were by no means a peripheral phenomenon, and were reflecting a widespread historical tendency.[78] The curious ambivalence of de Man was also revealed in the fact that de Man, whose books were confiscated and burned in Germany in 1933, published a manifesto directed at the proletarians of his country on June 28, 1940, when the German troops occupied Belgium. In this manifesto he wrote: "For the working classes and socialism, this collapse of a rotten world is no misfortune but a liberation. Despite all of our defeats, pains, and disappointments, the path is cleared for the pacification of Europe and social justice."[79] De Man considered the collapse of the parliamentary system and the flight of the Belgian upper class as an externally induced revolution. In contrast to Doriot and Déat, he rejected the idea of the German model as suitable for Belgium, but like them he was of the opinion that the military disaster of their countries had brought about a revolutionary situation in which it would be possible to create the national state of the 20th century. In fact, the German occupation forces were greeted in a more-friendly manner in the working class suburbs of Brussels and Paris than in middle class neigborhoods, and it should not be forgotten that a con-

[76]Hendrik de Man, *Die sozialistische Idee* (Jena, 1933), p. 335.

[77]de Man, *Die sozialistische Idee*, p. 328.

[78]John Lukacs noted that Hitler was the "outstanding representation of a historical movement which shaped for at least 20 or 25 years in ever new forms the entire world." *Churchill und Hitler: Der Zweikampf* (Munich and Zurich, 1995), p. 22.

[79]Quoted from Hendrik de Man, *Gegen den Strom: Memoiren eines europäischen Sozialisten* (Stuttgart, 1953), p. 246.

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siderable part of the unionized left in Belgium and France became members of the collaboration.[80]

Yet de Man, Doriot, and Déat would be as disappointed in their expectations as would the other leaders of the larger or smaller national-socialist parties who had put all their hopes into cooperating with Germany. They did not want forced cooperation with a victorious conqueror but the establishment of an entirely new national-socialist bloc of states under German hegemony. In fact, during the brief period between the victory over France in May 1940 and the beginning of the war against the Soviet Union in June 1941, it appeared conceivable that national socialism would become a continental-European phenomenon: authoritarian and militaristic, nationalist and social, anticommunist, anticapitalist, and antisemitic. As difficult as the establishment of such a system would have been, however, its realization was impossible because Hitler—quite consistent in light of his Darwinian convictions—was not interested in the export of the German system to other countries. In this case, other countries could have used the same sources of energy which he wanted to reserve exclusively for the Germans. On the contrary, he preferred to cooperate with bourgeois or openly reactionary governments from which he expected more willingness for compromise. Even when, under the impression of the first military disappointments in Russia, Hitler showed more willingness to cooperate with the conquered people, this propaganda for a "New Europe" had largely tactical purposes. His complete inability to develop a viable foreign policy strategy immediately defeated any such plans.

In June 1944 when the defeat of the NS regime had become unavoidable, one of Hitler's most ardent defenders, French author Pierre Drieu la Rochelle, wrote that the experiment of a new Europe had failed because the "revolutionary elan of Nationalsocialism" had proved to be too weak. The petty bourgeois Hitler had been incapable of bringing about the necessary "socialist revolution in Europe,"[81] which had led to a situation in which the Anglo-Saxons and the Russians partitioned the continent among themselves. Only the willingness to act like Stalin and bring about a complete social transformation would have prevented this development. What Drieu la Rochelle could not know was that Hitler had reached similar conclusions by then. In a letter to Mussolini dated March 8, 1940, he had noted that "Russia . . . after Stalin's final victory would undoubtedly undergo a transformation of the Bolshevisk princi-

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[80]See Schwarzer, *Idee*, pp. 88, 99, 102.

[81]Pierre Drieu la Rochelle, *Faschistische Bilanz* (July 15, 1944); quoted from Hans Werner Neulen, *Europa und das 3. Reich: Einigungsbestrebungen im deutschen Machtbereich 1939–1945* (Munich, 1987), p.280–88, here pp. 284, 285f.

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ple in the direction of a national Russian way of life."[82] The measures by which Stalin had, since the beginning of the war between Germany and the USSR, increasingly enriched Soviet-patriotism with elements of traditional Russian nationalism caused Hitler as much respect as the brutality with which his mirror image held his empire together. After the failed coup of July 20, 1944, Hitler expressed regret for not having dealt with the German officer corps in the same way as Stalin had done with that of the Red Army during the 1930s.

Like Mussolini, who had been thrown out of power in the summer of 1943, Hitler dreamed of returning to the revolutionary beginnings of the national-socialist movement and starting all over again with the necessary seriousness. Mussolini called his short-lived northern Italian remnant state a "social republic"—a slogan of the Second International[83]—and he propagated socializing industries, which even some of his fans considered "communistoid."[84] In a sharp anticapitalist turn, Mussolini went so far as to have published those writings of Marx, Engels, and Lenin which he considered worthwhile as a theoretical foundation of his old-new class politics. While the German officialdom became increasingly irritated with the Duce's politics, Hitler did not intervene. He himself would admit in his "Political Testament" that it was a mistake not to have radically eliminated the old ruling elites and incited the German and foreign workers against their exploiters and the oppressed Asian people against their British and French colonial rulers in order to set an "all-European revolution" in motion.[85]

Hitler did not believe that national socialism had failed until the very end. He believed that his ideology would reemerge after a period during which the victorious powers would jointly hold Germany down, and that the countries of the Third World would rise against them. There, strands of national socialism have in fact survived since 1945. In the wake of decolonization, numerous dictatorships have tried to promote the process of nation-building through some special form of national socialism.[86] That this was generally pro-Soviet and that only in exceptional cases did a direct continuity with the fascisms or national socialisms of the interwar period exist—as in the case of Nasser, who rose out of the movement of the Egyptian *Silvershirts*, or of

[82]Quoted from Zitelmann, *Hitler*, p. 478.

[83]See Georg Scheuer, *Genosse Mussolini: Wurzeln und Wege des Ur-Fascismus* (Vienna, 1985), p. 98.

[84]See Karl Mittermaier, *Mussolinis Ende: Die Republik von Salo 1943–1945* (Munich, 1995), p. 138.

[85]Quoted from Rainer Zitelmann, *Adolf Hitler: Eine politische Biographie* (Goettingen, 1989), p. 170.

[86]On this connection see Michael Wolffsohn, "Linker und rechter National-Sozialismus," *Zeitschrift für Politik* 24 (1977): 56–80.

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the great-Syrian national socialists—is of only minor importance once it is recalled that the anticommunism of the national socialists of the interwar period was an important but by no means primary characteristic. The strongest motive for the development and formation of national-socialist ideas was, and will likely be in the future, the protection of the nation and the comprehensive social integration of its members for the purpose of some, however defined, national self-preservation. Hence, the collapse of the Soviet system by no means led to the disappearance of the phenomenon, and as long as nation states are considered essential and efficient political units, this is not likely to occur.

CONCLUSION

"Generally, the mistake is made of considering national socialism merely as a revolt against reason, as an irrational movement without intellectual foundation," wrote Friedrich A. Hayek in *The Road to Serfdom*. He added: "Once its premises are accepted, it becomes impossible to escape its logic."[87] In fact, national socialism never developed a consistent theory such as Marxism, yet it fascinated a large number of intellectuals. Its partial ambivalence, indeed inconsistency, did not diminish its attraction. Quite to the contrary, national socialism was an ideological mosaic in which pieces could be missing without affecting the overall impression. It represented the most extreme form of nationalism and provided stable political orientation. It affirmed national-ethnic traditions and opposed the idea of equality. It called for an authoritarian state constitution, not in its traditional but in a functional sense and with decidedly technocratic features. The national socialists acknowledged the democratic age insofar as they always sought legitimation through popular assent. After initial indecisiveness, the idea of a totalitarian democracy almost inevitably took hold among them, in which the will of all would be condensed in one person. The leadership cult, as the mobilization of the masses, was one of the most outstanding common features of all national-socialist parties and regimes. Both seemed necessary in order to overcome the atomization of the individual in modern industrial societies, to deal with the threat of national competition, and to mold the many into one integrated whole. The identification of an internal foe (capitalism, Judaism, "foreignness and disease") and external enemies (potential military adversaries, occupants of resources and living space) defined and held the movement together, while the plausibility of the idea of protecting the nation state as a social state assured

[87]Friedrich A. Hayek, *Der Weg zur Knechtschaft* (Munich, 1975), p. 173.

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mass loyalty.

The ideological location of the national-socialist movement is only problematic if one accepts the traditional (left, middle, right) political classification system. While national-socialism can with some justification be counted among the new revolutionary right which emerged in the late 19th century, it is essential to emphasize its unique proletarian character. In light of this, national socialism can also be considered as a variant of the overall socialist movement, which was in fact never unified and consisted of many different forms. Social egalitarianism and the drive toward economic interventionism always assumed—unlike in conservative dictatorships—a great role for national socialists, and the number of collaborators from the camp of workers' parties was always comparatively great. Ultimately, the conclusion appears warranted that there is no place for national socialism within the scheme inherited from the French revolution. It is a product of the 20th century and was able to become one of its most influential ideologies at a time when the modern nation state had reached its highest degree of effectiveness and was called into question for the first time by new forms of political socialization. These conditions made national-socialism gain increasing popularity because, as with every successful ideology, it comprehended one particular aspect of reality, made it the center of its worldview, and combined it with other sometimes disparate ideas. Under the conditions of modern mass society, national-socialism offered an alternative to the *ancien regime* of the liberal state, its parliamentary system, its parties, and its inefficient bourgeios lifestyle. It was an alternative which was different from communism and appeared more appealing in the developed states of Europe than the model of the radical left, but it ultimately led to a collectivism that could hardly be distinguished from the Soviet kind.

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WHY RACE MATTERS: A PREVIEW

Michael Levin*

[*Editor's Note: Michael Levin's new book,* Why Race Matters: Race Differences and What They Mean, *is being published in early 1997. Here, he highlights several of the key issues from his forthcoming book, especially those having to do with individual liberty.*]

I

My main concerns in *Race*, as its title indicates, are the implications of genetic race differences, not their existence *per se*, so it was not strictly necessary for me to document these differences. It would have sufficed to ask, purely hypothetically, what follows *if* they exist. However, two incongruent yet related considerations forced a substantial discussion of the empirical issue. The first is that many people find the consequences of race differences so obvious that they only need to be convinced that blacks and whites do differ genetically to have read enough. At the same time there are many others who regard the possibility of race differences as too fantastic to be worth thinking about. For them, the topic has all the urgency of UFOs. To win their attention, it must be shown that genetic race differences are likely enough to take seriously.

The scientific material in *Race* is hardly original. Except for a statistical tweak or two, all the evidence for race differences cited in *Race* can be found in the standard literature of the subject. Since so few people seem to be listening, however, the facts bear repetition.

II

Race begins with a short exposition of the relevant biological and statistical concepts, particularly the distinction between phenotypes and genotypes. A *phenotype* is any trait of an organism: IQ, birth weight, and weight in adulthood are examples. An organism's *genotype* is the genetic basis of its phenotypes, the DNA that produce phenotypes in the environment(s) to which the organism is exposed.

Note the interaction of genotype with environment. Not only may different genotypes produce different phenotypes in

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the same environment, the same genotype may produce different phenotypes in different environments. Had you been born with the same genes but raised on rice instead of hamburger, your weight would probably differ. Liberal environmentalists make much of this interaction—some going so far as to deny that talk of genetic input makes any sense—but it also means that phenotypes, and phenotypic differences between individuals or groups, can be identified apart from their possible genetic basis. One need not know whether an observed race difference is genetic or environmental in origin to be sure it is real.

In particular, the evidence that blacks and whites[1] differ in phenotypic intelligence and motivation is overwhelming. For the eight decades during which IQ tests and related measures of mental ability have been given, white populations have consistently outscored black populations by slightly more than one standard deviation. Despite some talk of the IQ gap narrowing, the most recent studies continue to indicate that the full 1 SD difference emerges by age four.[2]

IQ tests are often said to measure only acculturation to white society, or to distort black intelligence because whites design them.[3] If standardized tests picked up only knowledge of white culture, the questions most whites answer correctly—the "easy" ones—should be those querying aspects of their culture available to most whites ("Who was Thomas Edison?"), while "harder" questions should be those querying white culture's more obscure aspects ("What is a niblick?"). Yet questions easy for whites are consistently found to be relatively easy for blacks also, and the questions hardest for whites are those hardest for blacks, implying similar acculturation between blacks and whites, so the claim of cultural bias is surely incorrect.

Further evidence that IQ measures an intrinsic mental property manifest in a variety of ways are its associations with nonsocial variables. For instance, IQ correlates positively with brain size[4] and efficiency of cerebral glucose metabolization,[5] although it is unlikely that white thoughts enlarge the brain, or

[1]And Asians, but that is not my topic.

[2]C. Peoples, J. Fagan and D. Drotar, "The Influence of Race on 3-year-old Children's Performance on the Stanford-Binet: Fourth Edition," *Intelligence* 21 (1995); J. Brooks-Gunn, P. Klebanov and G. Duncan, "Ethnic Differences in Children's Intelligence Test Scores: Role of Economic Deprivation, Home Environment and Maternal Characteristics," *Child Development* 67 (1996).

[3]By such an argument, one might claim that yardsticks of white manufacture unable to measure the height of blacks, or that blacks should poorly at games invented by whites, like basketball.

[4]L. Willerman, R. Schultz, and J. Rutledge, "*In vivo* Brain Size and Intelligence," *Intelligence* 15 (1991).

[5]R. Haier, B. Siegel, K. Nuechterlein, K. Hazlett, J. Wu, J. Paek, H. Browning, and M. Buchsbaum, "Cortical Glucose Metabolic Rate Correlates of Abstract Reasoning and Attention Studied with Positron Emission Tomography," *Intelligence* 12 (1988).

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that white children are encouraged to slow the burning of sugar in their frontal lobes. These correlations have so far been established only for whites,but the techniques of modern neurology[6] could be deployed tomorrow to search for race differences in brain function.

The rank-order and correlational evidence against test bias is indirect, but there is direct evidence. Logically speaking, a test for a trait is biased against blacks when a black must possess more of that trait to earn the same score that a white earns. (Tennis as a test of athletic ability is biased against people unfamiliar with the game, since only an outstanding athlete can play passable tennis the first time.) If IQ tests are biased, therefore, a black whose IQ measures (say) 110 should outperform 110-IQ whites on tasks with a large intellectual component, such as earning good grades in school. Yet standardized tests do not under-predict black performance on "criterion" tasks, and actually *over-predict* it[7]—that is, blacks with a given IQ or SAT score typically earn lower grades than whites with the same score. This anomaly suggests a weaker black achievement drive: whites on average try harder than blacks to reach long-term goals, and so whites reach those goals more often when pure cognitive ability is controlled for.

Before moving to the motivation issue, I should note a general point about intelligence stressed in *Race*: since there is *no* evidence that blacks are as able as whites, the egalitarian case for racial parity consists entirely of *ad hoc* conjectures[8] and definitional objections directed against inegalitarianism. One favorite target is the word "race," allegedly too vague for scientific employment. *Race*'s response is simply to operationalize "Negroid [i.e. black]" as "having mostly sub-Saharan African ancestors," and "Caucasoid [i.e. white]" as "having European ancestors." Erstwhile racial differences in IQ can then be reformulated without loss of empirical content as IQ differences between individuals with different geographical ancestries, and hypotheses about genetic differences between the races can be reformulated similarly. Nothing is lost but a word.[9]

Another popular conceptual objection is that no unitary ability answers to the word "intelligence." A statistical technique called factor analysis is used to extract a single factor, "*g*," detected by all mental tests, but Stephen J. Gould and others dismiss *g* as a mathematical artifact. The unitariness question is

[6]Chiefly positron emission tomography and magnetic resonance imaging.

[7]W. Garner and A. Wigdor, *Ability Testing* (Washington, D.C.: National Academy Press, 1982), 1, p. 72.

[8]E.g. that the criteria for validating IQ, and the criteria for validating those criteria, are all biased.

[9]*Race* cites egalitarians who contest the use of some supposedly unclear word ("race," "intelligence"), and then contest its abandonment.

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rather technical, but the upshot is that it is *irrelevant* to all racial issues. All sides agree that individual variation in IQ can be analyzed as variation in *g* or in a cluster of more specific factors such as verbal ability and numerical reasoning. Yet so far as explaining black achievement goes, it makes no difference whether whites are (*a*) more intelligent than blacks or (*b*) more able verbally and better at numerical reasoning than blacks, for in either case the race differences in literacy, school achievement, participation in science and other socially significant outcomes result from race differences in mental activity rather than racism. Likewise, it does not matter whether genes produce a race difference in *intelligence* or race differences in *verbal ability* and *numerical reasoning*. Either way, once again, genes, rather than racism, explain the difference in cognitive performance and its social consequences. From the moral point of view, finally, whites are innocent whether genes cause a shortfall in black intelligence or shortfalls in a cluster of specific abilities collectively labeled intelligence.

The burden of proof, usually borne by inegalitarians, should be placed on egalitarians. Quite apart from any psychometric tests, blacks seem less intelligent than whites. Black children do far less well in school than white or Asian children; the black adults seen in ordinary life and on television news commit more crimes, parent more illegitimate children, have lower-paying jobs, and boast less-regular work histories. Indeed, the very absence of evidence *for* racial parity in intelligence, given that evidence *would* exist (and be publicized by egalitarians) were the races equally able, is evidence *against* it. The question is not why anyone thinks whites are more intelligent than blacks, but why anyone would think otherwise.

III

Race differences in motivation are anchored by Walter Mischel's classic study of Dominican children who, when asked to choose between a small candy bar at that moment or a larger bar a week hence, overwhelmingly chose the smaller one. So marked was the black preference for immediate gratification when compared to a matched white sample that Mischel called tests in statistical significance "superfluous."[10]

Orientation to the present is a persistent theme of studies of black behavior. Blacks watch almost 50% more television than

[10]W. Mischel, "Preference for Delayed Reinforcement: An Experimental Study of a Cultural Observation," *Journal of Abnormal and Social Psychology* 56 (1958); "Preference for Delayed Reinforcement and Social Responsibility," *Journal of Abnormal and Social Psychology* 62 (1961); "Father-Absence and Delay of Gratification: Cross-Cultural Comparisons," *Journal of Abnormal and Social Psychology* 63 (1961).

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whites and, holding income fixed, spend three times as much on movies. Blacks spend about as much on electronic games as whites, but far less on computers. Black scores on the Minnesota Multiphasic Personality Inventory are indicative of impulse-ridden fantasies.[11] Thomas Kochman reports that in turn-taking situations, such as classroom discussion, blacks are much more likely than whites to burst in out of order.[12] This pattern of thought and behavior has been described as impulsiveness, lack of self-restraint, lower ego-dominance, and more rapid decay of reinforcement, but, as these terms contain implicit value judgments or causal hypotheses, *Race* favors the economist's neutral notion of time preference. An individual's time preference is measured by the money he would have to get tomorrow to forego $1 today, and represents the rate at which he discounts the future. In these terms, the mean phenotypic time-preference of blacks is higher than that of whites.

Also, contrary to pop sociology, black self-esteem is generally higher than white,[13] and—what is obvious in everyday life—the black self-presentational style is more confrontational. Blacks also appear to be less cooperative than whites and less inclined to follow Kant's categorical imperative, popularly known as the golden rule. For instance, blacks are significantly more likely than whites to agree with the statement "It is not hard for me to ask help from my friends even though I cannot return the favor." Kochman detects a black tendency to put self-expression ahead of the sensibilities of others, as when talking back to the screen in a movie theater: "With the shift in focus from *doing unto others* to *doing for oneself*, blacks can also act as their feelings direct without subsequent guilt." The best evidence for what *Race* calls the lower "Kantianism" of blacks is the black crime rate. Nobody, black or white, wants to be victimized by theft, assault or murder, yet blacks commit these acts far more frequently.

Defiant egotism has the same feel as impulsiveness—the traits converge in refusal to wait one's turn—but there are deeper links. Cooperation, reciprocal altruism, and Kantianism originate in the benefits accruing to everyone when everyone pulls together. However, many cooperative situations present Prisoner's Dilemmas: pulling along with everyone else is advantageous, but not as advantageous as pretending to pull while everyone else does the work. This being so, the only self-interested reason not to cheat is the danger of being caught, barred

[11]See W. Dahlstrom, D. Lachar and L. Dahlstrom, *MMPI Patterns of American Minorities* (Minneapolis: University of Minnesota Press, 1986).

[12]T. Kochman, *Black and White: Styles in Conflict* (Chicago: University of Chicago Press, 1983).

[13]A. Tashakkori and V. Thompson, "Race Differences in Self-Perception and Locus of Control during Adolescence and Early Adulthood," *Genetic, Social and General Psychological Monographs* 117 (1991).

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from future cooperative ventures, and ending up worse off than if one had cooperated. But there is a catch: an individual will choose cooperation only if he can grasp the future losses jeopardized by cheating, and the time-discounted (dis)value of those expected losses exceeds his immediate gain from cheating. In other words, his intelligence must be sufficiently acute and his time-preference rate sufficiently low. Thus, *the lower mean intelligence and higher mean time preferences of blacks explains their less cooperative and rule-bound ethos.*

Race connects intelligence and time preference to free will via a difficulty in the standard exponential representation of discounting.[14] If you are indifferent between one unit of a good (say, G) today and n units of G tomorrow, then your daily discount factor is 1/n. (We can think of 1/n as being the inverse of the gross interest rate: someone with a personal interest rate of 10% has a gross interest rate of 110%—principal plus interest. Equivalently, one with a personal interest rate of 10% has a discount factor of 1/1.1.) Thus, if 1/n is the mean discount factor for whites and 1/n′ is the mean discount factor for blacks, then *Race* is arguing that n′>n.[15]

Still, weakness of will remains a puzzle on this analysis. How is it possible to choose a dispreferred alternative, as we all do whenever we eat a dessert we know we should avoid?

Weakness of will becomes more comprehensible in a model where time discounting is hyperbolic.[16] In a hyperbolic time-discounting model, the perceived value of G in the future depends on how much one values a G in the hand, and on a parameter I, known as the "coefficient of impulsivity." To relate this back to the standard model, think of I as being similar to n: the higher the value of I, the lower the weight one gives to the future at any fixed level of current holdings of G. The argument in *Race* is, therefore, that the mean coefficient I for whites is smaller than the mean coefficient I′ for blacks.[17]

So if I is the mean white coefficient, and I′ is the mean black coefficient, *Race* argues that I′>I. On this analysis, an agent may prefer G in the hand to a smaller G′ in the hand, but, if G is far-

[14]In *Race*, the following material is divided between an appendix and the chapter on crime.

[15]A standard discounting model might make sense when discussing finance, where it makes little difference whether one is computing the present value of $100 or $1,000,000. That is because the interest rates we see in financial models are typically taken to be market equilibrium rates, not reflections of an individual agent's preferences. When we talk about individual behavior, we might expect that the way one discounts the future depends largely on what one has in the present. People may be more inclined to discount future utility, rather than simply discounting future consumption.

[16]The standard discussion is G. Ainslie, *Picoeconomics* (Cambridge: Cambridge University Press, 1992).

[17]The most elegant expression for perceived value is $G/[I \cdot t + Z]$, where Z is a constant to keep perceived value from becoming infinite when t=0.

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ther in the future than G', the perceived value of G' can temporarily overtake that of G.

Consider the following illustration. Entering a restaurant at 7:00, I prefer skipping my dessert at 8:00 to having a dessert at 8:00. I know at 9:00, I will be more pleased if I have skipped the dessert than if I have succumbed. However, once my main course has come and gone and the waiter returns to offer me a dessert, my situation changes. If it is now 7:45, I no longer consider what would have made me happier at 7:00. That time period has come and gone, and now I only care about what pleases me now and in the future. When the waiter asks if I should like him to bring me the cheesecake, my answer depends on what pleases me now and what will please me later; the more heavily I discount the future, the more I will focus on what pleases me now. I refer to the time period when the short-term pleasure of the dessert tempts me as my "period of weakness." I have weakened despite having remembered what I had told myself at 7:00, and knowing that I will feel indigestion at 9:00. It is during this interval that I believe myself not in control, not fully autonomous.

Now, all else equal, larger coefficients of impulsivity will bring about longer periods of weakness. The future becomes more heavily discounted, so there is more room for a discrepancy between the future decision which I initially plan to make (avoiding the dessert) and the choice I actually make in the future (when the waiter arrives with the dessert menu). The argument in *Race*, that the coefficients of impulsivity are greater for blacks than for whites, would therefore imply that blacks will suffer longer and more frequent such episodes.

The fact that behavior during periods of weakness is less than free is explained by John Locke's insight that free action must not only express preferences—all action, even of children, animals and madmen, does that—but that the preferences expressed must meet the agent's approval. *Race* expounds a conception of free will according to which an agent is free when he is able to step back, examine his desires, and act on those desires he prefers to act on.[18] This is why choosing a prospectively dispreferred but transiently attractive alternative is not free; I did what I wanted, but not what I wanted to want. But a more significant corollary is that freedom increases with reflectiveness and self-restraint. With insight into his own motives, the intelligent man can anticipate preferences he does not wish to act on, and thereby take steps to forestall their becoming dominant. Cognizant that he will be tempted by dessert, he may drink a glass of water, or shame himself into declining dessert by assuring his companions beforehand that he will. Self-restraint, for its

[18]The account is compatibilist, i.e. consistent with universal determinism.

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part, gives a man time to contemplate the consequences of yielding to questionable impulses.

Race concludes that blacks are, on average, less free and responsible than whites. Further, it argues, awareness of this disparity in autonomy explains why liberal fretfulness about the root cause of black crime never matched by fretting about root cause of stock fraud, or lynching, or the Holocaust. Liberals, without quite admitting it even to themselves, think of black crime as akin to an amoral natural force. This awareness also explains liberal lenience, since penalizing black criminals seems to punish them for what they cannot help. In this, we will shortly see, liberals are wrong.

Although their self-esteem is higher, blacks consider themselves more powerless than whites.[19] At the same time, perception of powerlessness is associated with loss of self-esteem among whites. This discrepancy offers some empirical support for the greater heteronomy of blacks, for it can be interpreted as showing that blacks regard the self as less a "locus of control" than whites do.[20] This is turn makes sense if, for blacks, the self is a less significant mediator of behavior.

IV

Having discussed phenotype race differences, I now turn my attention to the evidence fo rgenetic causes of those differences. I group the evidence into seven categories.

1) *The high interindividual heritability of IQ and personality*

Holding group differences to one side, twin studies indicate that genetic rather than environmental variation explains most of the difference in intelligence between individuals, and much of their personality differences. A pair of randomly selected individuals will differ in IQ by about 17 points, but identical twins reared apart typically differ by about six. Identicals raised apart are also highly similar on dozens of personality traits, including impulsivity. There are ad hoc environmentalist explanations for some of these concordances,[21] but only genetic factors seem able to explain them all.

At this juncture environmentalists can be relied on to insist that a genetic account of *individual* differences does not entail a genetic account of *group* differences. After all, genetically identical seeds will yield plants of different heights in different soil.

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[19]A. Tashakkori, "Race, Gender and pre-Adolescent Self-Strucure: A Test of Construct-Specificity Hypothesis," *Personality and Individual Differences* 14 (1993).

[20]Tashakkori and Thompson, "Race Differences."

[21]I.e., separated twins get placed in similar families; twins reunited by psychologists influence each other.

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This is true enough, but it is also clear that some mean group differences are too large to be explained plausibly by any environmental divergence. Bonsai *might* all be undernourished Redwoods, but it is not very likely. Numbers crunched in *Race* show how unlikely it is that differences in black and white environments have produced the racial IQ gap. Speaking qualitatively, this conclusion is very natural. American whites and blacks would seem to inhabit quite similar environments—they speak the same language, watch the same TV shows and movies, attend schools with identical curricula, vote in the same elections. Black slums are of course less salubrious than white suburbs, but since a neighborhood is created by its residents, the disarray in black slums counts as an effect rather than a cause of race differences. (*Race* discusses such gene/ environment correlation at length.) Indeed, the fixity of the IQ gap during a century that has seen black and white environments converge leaves genes the only remaining source of variance.

2) *Early appearance of race differences.*

The appearance of the IQ gap before age four rules out most environmental causes: low teacher expectation cannot affect the development of a black infant still in his cradle. One environmentalist hypothesis consistent with the early onset of race differences is poor nutrition for black children, but this must be rejected on other grounds: (1) black babies are physically more precocious than white; (2) Department of Agriculture surveys indicate that black children do get the minimum requirement of vitamins and minerals; and (3) blacks dominate sports from early youth on. If, however, there is truth in the claims that black children receive poor nutrition, then the failure of black mothers to feed their children properly in a society inundated with messages about good health may itself indicate lower parental intelligence, which might then be passed to offspring.

3) *Physiological race differences*

IQ correlates with brain size, and, controlling for body size, black brains are about 4% less massive than white.[22] To argue that brain size means one thing for whites and another for blacks would countenance race differences in the functional organization of the brain, a position as biological as genetic differences, and presumably as repugnant to environmentalists. In any event, the IQ/brain size correlation appears to hold between as well as within races, since black and white head sizes—hence, inferentially, brain sizes—are identical when IQ is controlled for. Although I have heard environmentalists conjecture that racism shrinks black brains, this finding is difficult to

[22]Data is cited in *Race;* J. Rushton, *Race, Evolution and Behavior* (New Brunswick, N.J.: Transaction, 1994) contains a thorough review and analysis.

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explain non-genetically, since eventual adult brain size is fixed by early childhood.

With regard to temperament, young black males exhibit relatively high levels of serum testosterone, a mediator of aggression and libido. A race difference has also been found in a gene controlling alcoholism.

4) ***Transracial adoption***

Sandra Scarr and her colleagues tracked over one hundred black and mixed-race infants adopted in the late 1960s by upper-middle-class white families. The mean IQ of the black adoptees at age 7 was 97, but had fallen to 89 by age 17. More significantly, at both junctures the IQs of the black cohort remained a standard deviation behind those of the birth children and the white adoptees of the adoptive families. Scarr takes these figures to show the persistence of racism in the surrounding culture, but she does not specify what racist influences the adoptive families failed to block. A genetic analysis is obviously simpler.

Incidentally, the decline in black IQ with age in the adoption study is consistent with the known increase in the heritability of intelligence across the life span. The currently accepted theory is that individuals increasingly shape their own environments as they mature, so that their environments come increasingly to reinforce innate tendencies. The parents of a genetically dull child may read to and otherwise stimulate him to a reasonable level of school achievement, but as an adult on his own he will cease reading and choose nonintellectual companions, leading to less-impressive intellectual performance.

5) ***Failure of Intervention***

Like transracial adoption, early intervention programs such as Head Start control for many of the environmental variables to which lower black intelligence is commonly attributed. Facilities designed by highly motivated psychologists to stimulate children as young as six months are not likely to omit any factor crucial for mental development. Yet these programs have produced no lasting gains in the IQs or academic achievements of black children (although Head Start *has* produced small but measurable gains in the academic achievement of *white* children).

6) ***Achievement of other Minorities***

Despite functioning in more deprived environments, many groups, including American Indians, outscore blacks on IQ tests, particularly on the least culture-bound items. Jews, persecuted more viciously than blacks for many centuries, have consistently produced a disproportionate number of scholars wherever they have lived. Chinese and Japanese in the US, two

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highly successful groups, are as recognizably non-white as blacks, undercutting the hypothesis that black failure is related to identifiability. Explaining the differential success of various groups in terms of their cultural values is circular, as it begs the question of why different groups inculcate different values.

7) *Africa*

There was no white racism in Africa during the millennia that blacks have dominated that continent, yet the mean IQ of African blacks is considerably *lower* than that of American blacks. Again contradicting conventional wisdom, *Race* crunches some more numbers to show that the 100,000+ years during which Africans and Eurasians evolved apart was enough to permit the African/Caucasoid divergence.

No sub-Saharan society has ever developed mathematics, a written language, formal educational institutions, or the wheel, while white and Asian societies have done so many times. Once again, attribution of this failure to culture is circular, begging as it does the question of *why* whites and Asians, but not blacks, built cultures in which these indicia of civilization appeared. *Race* takes the strongly individualistic line that culture and society are not independent causal factors shaping their members, but effects of their members' individual properties—effects, that is, of phenotypes expressing underlying genotypes in ambient physical environments. Cultural attainments thus mirror innate factors.

Thus, looking at these seven categories of genetic data, to say that blacks are genetically less intelligent and more impulsive than whites is not racist, since racism is by definition *bad*, and facts, however unwelcome, are morally neutral. Mention of genes and race in the same breath triggers hysteria not because it is a reminder of Hitler (nobody can seriously fear a Nazi resurgence), but, *Race* proposes, because genes determine personal identity. The reader is asked first to imagine his zygote, with his genes, born into an environment unlike his natal one and becoming an adult with phenotypes unlike his; I suspect he will agree that the adult described would still be *him*. The reader is next asked to imagine a zygote with different genes somehow developing into an adult with precisely his present phenotypes; I suspect he will agree that that being would nonetheless *not* be him. Judgments of identity thus track genotypes, making genetic but not environmental factors *essential* to the self. For this reason, genetic deficiencies are seen as essential, and talk of them consequently more wounding, than deficiencies imposed by the environment.

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V

Before it turns to any concrete implications of the race differences, *Race* devotes two chapters to the topic of norms. My concern that this material might pull the discussion too far toward pure philosophy was overridden by several worries that prompted its inclusion.

For one thing, I wished to make clear that no empirical facts about race imply that whites are *better* than blacks, a judgment so often imputed to hereditarians that only a full airing of the issue of value can put the imputation to rest. To this end *Race* presents a resolutely "naturalistic," non-realist view of values. There being no empirical phenomena requiring objective value for their explanation, we have no more reason to believe in it than to believe in phlogiston, or the little man that wasn't there. A God's-eye view favors neither high nor low time preferences; investing $150 may be more prudent than spending it on running shoes, but it is not inherently better. Greater intelligence is likewise no better or worse than or equal in value to less intelligence. The mean intelligence levels of whites and blacks were adaptations to selectional pressures at work in Africa and Eurasia, just as the lion's strength and the gazelle's speed are evolved responses to selectional pressures in their niches. And just as the lion's talons are neither better nor worse than the gazelle's speed—each creature simply is what it is—whites are not better or worse than blacks.

Race is similarly neutral toward morality itself. An individual's "moral" values are construed as those of his preferences that he wants everyone to adopt (and wants everyone to want everyone to adopt); and a group's morality is the set of moral values shared by most of its members. Given the advantages of mutual trust and the temptations to exploit trust by lying, it is likely that every group reinforces truthfulness to some extent. However, groups may differ in the moral values they adopt and the intensity with which they reinforce them. Moral codes, too, are adaptations over evolutionary time to differing environmental conditions, none better (or healthier) than any other. In particular, it is suggested, individuals had a better chance of surviving by their solitary efforts in the milder sub-Saharan climate than in Eurasia, leading to less intense selection for cooperativeness and reciprocity. That is why blacks appear to be less cooperative or committed to the golden rule than whites. Strictly speaking, the black/white difference is not so much a divergence *in* morality—in the rules blacks and whites universally prescribe—as in concern for morality itself. The notion of a moral value has universality built into it by definition, so relative indifference to the golden rule amounts to greater *a*morality. But once again, amorality for the naturalist is no better or

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worse than morality. Wolves are amoral, but there are no grounds for judging a world with moral agents but without wolves better or worse than one with wolves but lacking moral agents.

It is proposed that this evolved divergence in morality helps explain the curious racial guilt felt by whites who have done nothing to blacks, and the deference of many whites to the most outlandish black demands. Whites, having evolved to interact with other whites, interpret black signals to mean what they would mean coming from whites. Whites are programmed to interpret and respond to black indignation as if it signaled the more serious injuries that would elicit that level of indignation from whites, so constantly overestimate the seriousness of black injuries.

Race insists that explaining honesty and reciprocity by their inclusive genetic fitness[23] does not reduce morality to disguised selfishness. Inclusive fitness theory, despite much bad press, does not deny that people are morally motivated to play fair and sometimes make sacrifices. It claims, rather, that maximization of genetic fitness is *why* these motives exist. A tendency to cooperate in Prisoner's Dilemmas and even sacrifice oneself for others is an evolutionarily stable strategy, but the motive of cooperation selected is nonreductively unselfish.

Skeptical naturalism also raises the practically pressing worry of how to draw normative consequences from race differences. Can a skeptic criticize affirmative action or endorse freedom of association if neither is intrinsically good or bad? *Race*'s answer exploits two old philosophical saws: (*a*) Much apparently normative disagreement is actually disguised factual disagreement, and (*b*) all genuinely normative suasion assumes some prior agreement on normative principles. Option (*a*) lets naturalists participate in the many moral disputes resoluble by empirical investigation: whether Jones owes Smith damages for his broken leg, for instance, depends on whether Jones did in fact break it, a factual issue the naturalist may address. In the case of essentially normative disputes, option (*b*) counsels the naturalist to bring his interlocutor around by appealing to his interlocutor's values. Show a man that your view is implicit in his commitments, and he must accept your view on pain of inconsistency. Such an appeal is no weaker for being *ad hominem*, since everyone thinks his own values are correct.

In light of this, the pragmatically most fruitful perspective from which to discuss race is that of my reader who, I assume, accepts Caucasoid values. After seeking to epitomize Caucasoid

[23]Measured by the number of genetic relatives carrying partial copies of its genes which an organism leaves behind, as opposed to individual fitness, which is an organism's own probability of survival.

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values (they revolve, I say, around the golden rule), *Race* applies them to a cluster of issues at the heart of America's "race problem."

VI

Those few on the Right (Herrnstein and Murray[24]) or Left (Christopher Jencks[25]) willing to discuss psychological race differences say their origin does not matter. One aim of the pivotal chapter "Biology and Justice" is to show how issues of racial justice hinge on whether these differences are biological in origin.

The quota debate is patently about compensatory justice, since quotas are meant to redress injuries said to have been inflicted on blacks by whites. Lyndon Johnson introduced affirmative action for government contractors via the analogy of a man released from shackles required to run a foot race, and who (Johnson reasoned) deserves a head start to make up for his unjust handicap.

Many quota advocates say they reject the redress rationale. Johnson's metaphor has lost its vigor as it has been realized that an edge for the lame runner cheats his competitors, who are in no way responsible for his plight. In literal terms, affirmative action, particularly when state-imposed, is recognized as *prima facie* unfair to whites who never discriminated.[26] To dodge this objection, defenders of affirmative action now say it is necessary to create role models or prevent renewed discrimination. Ronald Dworkin offers an elaborate rationale based on a distinction between personal and external preferences. *Race* spends a number of pages arguing that virtually all of these rationales tacitly rely on compensation, or share the compensatory premise that the race gap in attainment is due to harm done to blacks by whites. The compensation rationale *and* its many avatars are no firmer than the causal premise.

Ironically, most critics of affirmative action also leave this premise unchallenged, perhaps in hope of avoiding the epithet "racist." Affirmative action is bad, they say, because it stigmatizes blacks, or costs too much, or replaces equality of opportunity with equality of result. There is something to many of these criticisms, but *Race* takes pains to show why, by missing the logical heart of the matter, they are also rhetorically ineffective. The causal question is all.

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[24]R. Herrnstein and C. Murray, *The Bell Curve* (New York: The Free Press, 1994).

[25]C. Jencks, *Rethinking Social Policy* (Cambridge, Mass.: Harvard University Press, 1992).

[26]Assuming that discrimination is an injury, which I do assume in this chapter.

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A propos cost, it is curious that redress for racial wrongdoing is always said to require placing blacks where they should have been, even though their inferior qualifications incurs great inefficiency. After all, redress is normally constrained by feasibility: when literal restoration of the complainant to his uninjured condition would be too disruptive, an equivalent is thought sufficient. A dancer who loses his foot in an accident asks the earnings the accident cost him, not the right to be a one-legged King Kastchei. *Race* speculates as to why champions of redress accept no cheaper substitutes, such as lump-sum reparation payments, for compensatory hiring.

Because affirmative action rests on a theory of the cause of the racial attainment gap, *Race* argues, only the race differences in intelligence and motivation, which explain the gap more plausibly than racism, offers a convincing case against it. Negatively, racial discrimination cannot explain black failure because there is not enough of it. Slavery ended over 130 years ago; segregation in the public schools ended over 40. *Private* discrimination has been a federal tort since 1964, and government-sponsored preference for blacks has pervaded American society since 1970. Whites frequently favor black candidates in elections. Positively, the IQ gap predicts the contours of black failure with remarkable accuracy. For instance, according to the IQ data, only about 13 blacks in any one-year cohort are as intelligent as the average mathematician, and in fact, blacks earn only about a half-dozen doctorates in the mathematical sciences annually, a impressive fit given the small numbers involved. Black over-representation in classes for the mentally retarded falls right out of the IQ numbers. As one might expect in a quota-ridden society, blacks are *over-represented* in prestigious areas when IQ is fixed.[27] There is no quantitative data on the contribution of impulsivity to the attainment gap, but *Race* cites many commentators on the low level of black entrepreneurship and willingness to work.

That the attainment gap is explained by race differences in *phenotypic* intelligence and motivation allows heads-up compensation theorists to reply (as some have) that this phenotypic variance is itself caused by racism. Blacks don't try because trying is pointless when the deck is stacked against them. And were racism thus indirectly responsible for the attainment gap, the compensation argument would reenter at one remove, with blacks deserving redress for their wrongfully caused dysfunctional traits. That is why letting the issue rest at the phenotypic level is inconclusive. The case for reparation can be judged only by looking at whether racism offers a better account than biology of the lower IQs and higher time preferences of blacks. The

[27]Here I call on the work of Herrnstein and Murray, and Linda Gottfredson.

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topic of genes is unavoidable, *Race* insists. No matter what the black shortcoming, some will insist that racism is its cause, or the cause of its cause, or the cause of that cause. Sooner or later, the genetic question must be faced.

In fact—this theme permeates *Race*—play of the gene card, far from being a gratuitous swipe at blacks, has been forced on defenders of justice by the constant diabolization of whites. It is impossible to be silent when silence amounts to an admission of guilt. When Smith limps into court, berates Jones for breaking his leg, and demands damages, Smith must be prepared to hear Jones deny the charge. Smith has opened the door to alternative hypotheses about the cause of his deformity, for instance that it runs in his family, and he must be prepared to face them. Smith cannot accuse Jones and then call him tactless for pleading innocent—exactly what liberals do when they blame whites for black woes, then call whites who deny the charge insensitive and try to silence them with speech codes.

Actually, *Race* notes two commonly neglected reasons why genetic arguments may not be strictly necessary to rebut the compensation argument. First, the suffering of the North and the non-slave-holding South during a Civil War fought to give black slaves their freedom may have made further white sacrifices superfluous (i.e., non-slaveholding whites have already done more than their fair share). Second, subsequent black behavior may have canceled any remaining debt. The high black crime rate and the preference of black offenders for white victims have subjected whites to many more murders and robberies than would have been inflicted by a white subpopulation of equal size. In addition, blacks have marred or destroyed enormous stretches of real property created by whites, as is obvious from a tour of any large black neighborhood. On balance, blacks may owe whites compensation.

Race pursues the issue of justice beyond compensation, to the distributive fairness of racial inequalities. Many writers simply assume that "we" (unspecified) should keep trying environmental interventions in hope of finding one that raises black IQs to white levels.

The obvious objection is that such regimens may not exist. Champions of "let's keep trying" treat what is possibly possible as if it were actual, whereas the racial gap may be, like differences in eye color, ontogenetically fixed. But there are deeper problems. Whites alone can afford to fund efforts to raise black IQs, and it is not obvious, once compensation is set aside, why whites have any duty to channel resources to that end. Virtually no one believes that equality is good *per se*.[28] The environments

[28]The discourses of some prominent *soi-disant* egalitarians like John Baker and Michael Walzer are deconstructed to this effect.

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of black children are less stimulating than those of white children, but, *Race* insists, the distributive baseline for where American blacks "should" be, namely the sub-Saharan African milieu they would have occupied had they never encountered whites, is far *less* stimulating than a plantation or a segregated school in the Jim Crow south, to say nothing of modern schools. Perhaps everyone has an equal right to resources when they are literally the unprocessed bounty of nature, but Caucasoid morality decrees that wealth created by human hands belongs to the hands that made it.

Whereas it is always clear who should finance correction of a compensatory injustice, namely the tort-feasor or his legatees, appeals to distributive justice obscure the cost question. In fact, may proponents of distributive justice, like John Rawls, explicitly divorce distributive rights to wealth from contribution to it, and are duly chastised in *Race* for this. Critics of inequality, like Jonathan Kozol, who complain of more money being spent on predominantly white than predominantly black schools are not merely uninformed, although they are that—*more* is now spent per capita on black children than on white children in the nation's public schools because blacks need more special education and counseling. Worse, these critics are morally obtuse: there would be nothing wrong with white children receiving more resources, given that these resources are controlled almost exclusively by white parents. Per capita, blacks pay about half the income tax whites do, and 20% of the property taxes, the main source of school funding. Statistics cited in *Race* show Southern whites during the Jim Crow era paying $15.60 for black schools for every $1 paid by blacks. It takes considerably imaginative effort to appreciate it, but the segregated schools of the American South expressed white generosity, and integration has given blacks access to schools, with their labs and computers, even further beyond what blacks could create by their own efforts.

The chapter on justice ends with glimpses at utilitarianism and Rawls's Difference Principle, that permissible inequalities must benefit the worst off. While neither is consistent with ordinary conceptions of justice, it is noteworthy that utilitarian bang-for-the-buck calculations and (rather surprisingly) the Difference Principle may both steer resources away from blacks. Over time, the average well-being and the prospects of the worst off have been most markedly lifted by the inventiveness of the intellectual elite. Directing contested resources to society's most gifted—predominantly white and Asian students—may thus help everyone, blacks included, more than directing those same resources to blacks, a conjecture confirmed by the improved white performance unmatched by improved black performance returned on the investment in Head Start.

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VII

Race begins its discussion of crime with data showing that blacks commit violent felonies at a rate ten times that of whites, and decidedly prefer white victims. Despite the enormous publicity given to any white-on-black felony, a black is on average about *twenty-five* times more likely to kill a white than vice-versa. The question is what responses are appropriate.

Race divides the question into private and public. Its view of appropriate private measures, not shocking to libertarians but scandalous in many quarters, is that individuals have a right to consider race when assessing risk, and to be especially careful when dealing with blacks. It is rational for a man on a deserted street to be more leery of a black heading his way than he would be of a white, and to cross the street or turn around. It is rational for a cabbie to refuse to pick up young black males. Unfortunately, such permissible avoidance is now often illegal. Cabbies who refuse black fares lose their licenses.

Libertarians will wonder why a right to avoid blacks needs any defense at all, since it falls under voluntary association and self-defense. Here emerges a theme prominent in the last third of *Race*: the *rationality* of exercising rights race-consciously. Americans respect freedom of association, but they also want assurance that it is not being abused. One reason for passage of the Civil Rights Act, the Fair Housing Act, and other infringements of liberty has been the conviction that a wish not to hire or otherwise associate with blacks must be absurd, vicious, or insane. This conviction has forced friends of liberty to say, in effect, "There is no good reason to avoid blacks, but people have a right to do so anyway," which, while perfectly consistent (a right is a right, after all), leaves non-libertarians dissatisfied. The statistics on race and crime show that avoidance of blacks is perfectly rational.

A right to flee danger is not the only truism defended at inordinate length in this context; several abstruse issues about statistical inference and risk are analyzed to prove that, since blacks commit more crime than whites, an arbitrarily chosen black is more apt to be a criminal than is an arbitrarily chosen white. Where race is concerned, people will deny what they elsewhere find obvious, necessitating argumentative overkill.

Libertarians may join liberals in rejecting race-conscious state enforcement of rights against aggression, but I argue that this too is permissible.[29] For instance, a policeman may frisk a young black male under circumstances in which he may not

[29]A libertarian can recast the issue as the permissibility of race-conscious action taken by his protective association.

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frisk a young white male, on the statistical grounds that the black is more likely to be up to no good.

Race's preliminary argument for this conclusion is the precedent offered by suspect profiles for interdicting smugglers and other statistical algorithms used by the state to deter crime. The central argument is appeal to the Hobbes/Locke theory of the state. While Locke and Hobbes of course disagree about the existence of natural rights, they are at one that the *purpose* of government is to guarantee security; the state exists to prevent aggression. Moreover, this function is normally understood to allow some preemptive action against merely potential aggressors. I may disarm a man gesturing menacingly with a gun, and the police, my agents, may detain him. Since race is a valid predictor of threat, the state may consider race in pursuing its preemptive function. I emphasize that race-based screening meets the Supreme Court's "strict scrutiny" standard, which permits only those racial classifications necessary to achieve a compelling government interest. Controlling aggression is the state's *raison d'être*, a compelling interest if any is, and crime statistics show that attention to race may be necessary for its discharge.

An aside in this context about Nozick's *Anarchy, State and Utopia* may interest libertarians. My defense of race-based screening is patently "rights-maximizing," permitting aggression against possible innocents to minimize aggression against innocents overall. (I have argued earlier that ordinary Caucasoid morality maximizes rights in extreme cases.) As is well known, Nozick claims to reject such utilitarianism of rights in favor of a nearly absolute prohibition against aggression. I note, however, that his own derivation of the state is also rights-maximizing, for it lets the dominant voluntary protective association impose itself on independents because of the anxiety independents create for association subscribers. That a deontologist such as Nozick should find himself relying on minimizing intuitions does not vindicate race-conscious screening, but it does show how deeply such intuitions inform the ordinary concept of the state.

As the root cause of black crime seems to be so urgent a problem to so many, evidence is reprised that black crime is caused by the relatively low genetic intelligence, self-control and kantianism of blacks.[30] An important misconception addressed here is that the sharp increase in black crime over the last sixty years, presumably unaccompanied by any major genetic change, proves that black crime is environmental in origin. Relaxed sanctions against wrongdoing have certainly facilitated an increase in black crime, so the cause of the increase in

[30]A description offered by a group of young black males of their social relations bears a striking similarity to Hobbes's account of the state of nature.

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black crime in particular may be deemed environmental. However, this easing of sanctions has produced no corresponding increase in white crime. What is more, the net overall change in the criminal justice system has been toward an increasing similarity (and lenity) in the treatment of blacks and whites. Divergent responses to a similar environment imply genetic differentiation, so the post-1960 rise in black crime together with the stability of white crime makes the race *difference* in crime rates likely to be genetic.

Tracing black crime to genetic factors leads back to free will and responsibility. *Race* defends the view that, while the lower mean level of responsibility of blacks makes them by definition less punishable than whites, it permits other measures to control black crime. After all, homicidal maniacs, although not punishable, are not let roam free. *Race* suggests some possible deterrent measures, including swifter imposition of harsher sanctions on blacks than whites for the same infraction, in light of higher black time preferences, and (in light of the apparent more rapid maturation of blacks) treatment of blacks as adult offenders at an earlier age than whites. It is also noted that if white mistreatment has so affected the psyches of blacks that they are not accountable for their actions, as some apologists assert, blacks must also forego civil privileges associated with full rationality, such as voting and jury service.

The chapter on crime seeks above all to discredit the idea that black crime is an excusable payback for white misdeeds, an idea which encourages black criminals and weakens the will to resist them. Excuses for black crime would be equally poisonous even if blacks have been as mistreated as liberals believe, *Race* concludes, because no society can function with one group exempt from rules against theft and violence.

VIII

By now, many readers of *Race* will have wondered at my willingness, as in the case of selective police attention, to let people be judged on the basis of their race. Does not Caucasoid morality demand that each person be judged as an individual? Arguably the issue of individualism should have been faced at the outset, but it is best discussed in light of the facts and distinctions accumulated in the meanwhile. I conclude that the principle of individualism as conventionally formulated is preposterous, and when made plausible it allows race consciousness.

I stress at once that the principle of individualism is unavailable to supporters of quotas, who tend to trumpet this principle in other contexts. Every rationale for affirmative action is shown to classify by race and draw race-based statistical inferences

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about individuals.[31] This is not merely hypocrisy on the part of quota enthusiasts; it reflects their recognition that *all* judgments, all descriptions, categorize. Calling Jones optimistic, surely an individual trait, groups him with all the other optimists. Affirmative action errs not in grouping all whites together, but in grouping *incorrectly*. It would be perfectly proper to reason "Most whites profit from oppression; Jones is white; so Jones probably profits from oppression" were the generalization true; affirmative action is wrong because the generalization is false.

People cannot be judged by the traits that make them unique. Attempting to do so would produce such absurdities as friendships and hiring decisions based on fingerprints, or on precise places and times of birth. The shibboleth of individualism means, if anything, judging people by their *important* traits, which may not be unique—Jones's optimism properly influences how he is treated, but Jones is not the lone optimist—and anyway leaves important undefined. At the end of the day, *Race* argues, important traits are either those valued for their own sake, or (what is more relevant in the racial context) those that are *predictively valid*. Optimism is part of "who someone is" because it tells others something about his sense of humor, behavior under pressure, and overall personality. By this standard, a person's race also is important, for it supports numerous reasonable expectations. Taking someone's race into account is thus consistent with "treating him as an individual." It classifies him with all other members of his race, true, but noticing someone's optimism classifies him with all the other optimists. Of course, one should when possible look at more than race, just as one should try to learn as much about any individual as is relevant to the evaluation at hand. But sometimes learning more isn't possible, as when you are deciding whether to proceed ahead on the running track, or what to do when your neighborhood school becomes predominantly black. In any case, it caricatures awareness of a person's race to equate it with *disregard* of all his *other* traits.[32]

An almost-reflexive objection to race-consciousness is that race is involuntary, and that it is unfair to judge people by traits they cannot help. Yet *most* everyday treatment of people is based on involuntary, immutable traits. Mates are chosen because of their appearance and personality, neither of which are chosen. Personnel decisions are task-driven, and there is no reason to expect the ability to perform a valued task to be voluntary. Managers pick the rookie infielder with the fastest reflexes, even though reflexes are not subject to the will, because infielders must snag line drives. Conversely, many voluntary traits are

[31] Another self-evident truth that requires banging away at.

[32] *Race* reviews a number of caricatures of race consciousness.

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irrelevant to how individuals should be treated. For example, the Admissions Committee for a law school will be unmoved by an applicant's beer can collection.

Race speculates that the artificial link between voluntariness and importance was forged mainly by the civil-rights movement. Once it was decided to ban racial discrimination, some characteristic of race was needed to justify the ban; since race is involuntary, discrimination based on involuntary traits was proscribed (a proscription that subsequently rationalized banning free association based on sex, handicap and many another trait). The link has been sustained by the perception of all goods as *rewards*; since only voluntary behavior merits reward or punishment, goods like employment and housing (it then seems) must not be allotted by involuntary attributes like race. In truth, very few goods are bestowed as rewards. A rookie's place on the team is not a prize for quick reflexes, however much it feels that way to him, but an amoral management decision dictated by the goal of a winning team, dictated in its turn by the need to attract paying fans.

If race-consciousness is permissible and rational, what of action based on it, i.e. discrimination? Focusing first on the private sphere, *Race* distinguishes positive discrimination—harming someone because of his race—from negative discrimination, the *refusal to benefit* someone because of his race. Positive discrimination is indeed wrong, but because of its aggressive rather than discriminatory character. Negative discrimination is not wrong at all, although it can be made to seem so when represented as harm, for instance by describing a black turned away from a job as a "victim of discrimination." However, an applicant denied a job whether because of credentials, his race, or pure whim, is no worse off than he was prior to the refusal, hence not injured.

Libertarians will once again wonder at the fuss over the obvious, here the right to refuse an association for any reason, or no reason at all. Yes, *Race* acknowledges this right (deducing it from the categorical imperative); the deeper question it asks is why so many Americans have surrendered it, and taken it from those not willing to surrender it, in the name of civil rights. A couple of answers have already been broached. The assumption that blacks are just like whites, or would be but for discrimination, makes refusal to deal with blacks appear wholly irrational. By this point, I hope, readers of *Race* will be ready to agree that race differences in intelligence, behavior, and Kantianism show reluctance to deal with blacks to be quite rational. A second answer, it is argued, is that the perception of refusal to benefit blacks as coercing them is traceable to blacks' own limitations. As blacks could not enjoy Caucasian technology—TVs, multistory dwellings, automobiles—unless whites sold or gave it to

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them, white refusal to do so appears to *keep* blacks from these goods. *Race* tries to make clear that refusal to give or sell someone something he cannot make himself leaves his productive capacities undiminished, so does not harm him.

What of public discrimination? Having already argued that the state may act race-consciously to protect rights against attack, *Race* suggests that race-conscious welfare policies may be in order. While all welfare states may self-destruct sooner or later, as an increasing number of people batten off the public treasury, most whites, at least so far, prefer working and parenting children within marriage over the seductions of welfare. Consequently, a limited safety net *might* be stable in an all-white population. But the very different response of blacks to welfare incentives, including an illegitimacy rate nearing 70%, is by now familiar, making a safety net for blacks clearly unstable. If we must have welfare, *Race* suggests, blacks should be denied it or held to more stringent criteria. A general caution for libertarians is that institutions which don't work in black or multiracial populations (public education is an example) need not, by that token, be intrinsically flawed. The problem may not be the institution, but the population.

Race contends that the "equal protection" clause of the Fourteenth Amendment is consistent with state race-consciousness. The Fourteenth Amendment excludes only racial classifications irrelevant to any vital government function. (Inborn, involuntary and immutable traits might well be relevant, as when the state denies driver's licenses to the congenitally blind.) The Constitutional powers-that-be have decided that compensating blacks is a sufficiently central government function to support laws burdening whites. *Race* presses the logical symmetry of racial classifications burdening blacks.

IX

Instead of ending *Race* with a conventional authorial compendium of conclusions, I asked myself what I would want an American President to say in a major speech about race. That speech concludes *Race*.

The chief message of my imaginary President is honesty. The facts about race must be faced unflinchingly, and whites must stop being blamed for everything. More concretely, my imaginary President lays out three basic approaches to race differences. *Minimizing* envisions large-scale social engineering—daycare, childhood enrichment, racial preferences, job training—to reduce the race gap as much as is possible. This approach is not categorically ruled out, but the President makes clear that it will generate legitimate white resentment and will

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probably not work even on its own terms. Eugenic measures such as tax-funded incentives to encourage the more intelligent to reproduce are also rejected as taking too long, and not being the state's business.

The second approach, *control*, would seek to reduce disruptive black deviation from white norms by instilling self-discipline, respect for law, and the work ethic. It would ease the regulatory burden on black businesses, restrict or eliminate welfare, and impose swifter and more effective punishment for crime. Its downside is infringement of civil liberties and possible creation of civil disorder.

The *laissez-faire* approach is the policy, or non-policy, of leaving everything to the market. It would end all forms of income transfer on moral as well as practical grounds, repeal all laws against private discrimination, and abolish the minimum wage, allowing the many blacks with limited skills to find gainful employment. A small government would operate virtually race-neutrally on the economically efficient basis of merit. The market has the great advantages of not aiming at any pre-set outcome which biology may have put out of reach, and of imposing discipline without coercion. My imaginary President does not explicitly endorse *laissez faire* (he is, after all, President of *all* the people, including liberal statists), but his preference is unmistakable.

One might think that acknowledging biological race differences entails enhanced private and public race-consciousness, but a suggested alternative is "realistic race blindness": racial criteria should not be used in making public or private decisions, but the disparate racial impact of almost any decision is to be anticipated *and disregarded* as a natural consequence of race differences. A good idea apart from its racial impact is a good idea—period. If, for instance, it is pedagogically wise to track schoolchildren by ability, and the only reason not to do so is white and Asian dominance of the fast groups and black overrepresentation in the slow groups, then children should be tracked. However, it might be appropriate to weigh the racial impact of policies whose effect on any specific individual is unpredictable, but to which the races can be expected on average to react in significantly different ways. The President warns that welfare and penology may demand "realistic race conscious."

Mindful of the radical (by today's lights) character of some of his proposals, he cites Claudius's precept that "diseases desperate grown By desperate measures are relieved, or not at all."

Although *Race* makes some effort to explain my personal motives in taking up these highly charged issues, it may still be said that my views are defeatist, and that we should all continue

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to proceed on the assumption of racial equality. In the long battle between enlightenment and obscurantism, however, unpleasant truth has always proved more useful than well-intentioned lies.

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NEW RATIONALIST DIRECTIONS IN LIBERTARIAN RIGHTS THEORY

N. Stephan Kinsella*

What you do speaks so loud I can't hear what you are saying.[1]

Classical liberals and libertarians believe that individuals have rights, even if there is debate about just why we have them or how this can be proved. Robert Nozick opened his book *Anarchy, State, and Utopia* with the assertion: "Individuals have rights, and there are things no person or group may do to them (without violating their rights)."[2] Yet he did not offer a proof of this assertion, for which he has drawn criticism. It is commonly assumed that Nozick's argument is not *complete* until a proof of rights is offered.[3] Other theorists have offered, over the years, various reasons—utilitarian, natural law, pragmatic, and the like—why we should respect others' rights, and why we should recognize that individuals have particular rights.[4]

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[1]Old saying, quoted in Clarence Carson, "Free Enterprise: The Key to Prosperity," in *The Freedom Philosophy* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1988), p. 27.

[2]Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. ix.

[3]See e.g., Thomas Nagel, "Libertarianism Without Foundations," *Yale Law Journal* 85 (1975): 136–49 (reviewing Nozick, *Anarchy, State, and Utopia*). *See also* Tibor R. Machan, *Individuals and Their Rights* (La Salle, Ill.: Open Court, 1989), p. xiii ("In a way this book is a response to Thomas Nagel's criticism of [Nozick], a criticism often endorsed by others, to wit, that libertarianism lacks moral foundations."); Loren E. Lomasky, *Persons, Rights, and the Moral Community* (New York: Oxford University Press, 1987), p. 9. Nozick declines "to offer *any* systematic rationale for the vaguely specified collection of rights he takes to be basic" (footnote omitted).

[4]See, e.g., Ludwig von Mises, *Liberalism: In the Classical Tradition*, 3rd ed., Ralph Raico, trans. (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1985); Murray N. Rothbard, *The Ethics of Liberty* (Atlantic Highlands, N.J.: Humanities Press, 1982); Murray N. Rothbard, *For A New Liberty: The Libertarian Manifesto*, rev'd ed. (New York: Libertarian Review Foundation, 1985); Ayn Rand, *Capitalism: The Unknown Ideal* (New York: Signet, 1967); Ayn Rand, *The Virtue of Selfishness: A New Concept of Egoism* (New York: Signet, 1964); Machan, *Individuals and Their Rights*; Jan Narveson, *The Libertarian Idea* (Philadelphia: Temple University Press, 1988); Lomasky, *Persons*; Douglas B. Rasmussen and Douglas J. Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order* (La Salle, Ill.: Open Court, 1991).

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For instance, an economic case can be made for respecting the liberty of others. Given that you are a decent person and generally value your fellow man and wish everyone to live a satisfying life, you will tend to favor the free market and liberty, at least if you understand basic economic principles. But arguments such as these depend on other people accepting particular premises, such as valuing the general well-being of others, without which the argument is incomplete. Skeptics can always deny the validity of the premises even if they cannot refute free-market economics.

There can be no doubt that a rigorous argument for individual rights would be useful. In recent years, interest has been increasing in rationalist-oriented rights theories or related theories, some of which promise to provide fruitful and unassailable defenses of individual rights. These arguments typically examine the implicit claims that are necessarily presupposed by action or discourse. They then proceed deductively or conventionally from these core premises, or axioms, to establish certain apodictically true conclusions. Several such arguments are discussed below.

Argumentation Ethics

The first rationalist argument that I will discuss is Hans-Hermann Hoppe's path-breaking *argumentation ethics*.[5] Professor Hoppe shows that basic rights are implied in the activity of argumentation itself, so that anyone asserting any claim about anything necessarily presupposes the validity of rights. Hoppe first notes that any truth at all (including norms such as individual rights to life, liberty and property) that one would wish to discuss, deny, or affirm, will be brought up in the course of an argumentation, that is to say, will be brought up in dialogue. If participants in argumentation necessarily accept particular truths, including norms, in order to engage in argumentation, they could never challenge these norms in an argument without thereby engaging in a performative contradiction. This would establish these norms as literally incontestable truths.

Hoppe establishes self-ownership by pointing out that argumentation, as a form of action, implies the use of the scarce resources of one's body. One must have control over, or own, this scarce resource in order to engage in meaningful discourse.

[5]Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism: Economics, Politics, and Ethics* (Boston: Kluwer Academic Publishers, 1989), ch. 7; Hans-Hermann Hoppe, *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy* (Boston: Kluwer Academic Publishers, 1993), pp. 180–86. The following discussion is drawn from these sources. For a detailed review of the latter book, see N. Stephan Kinsella, "The Undeniable Morality of Capitalism," *St. Mary's Law Journal* 25 (1994): 1419–47. See also Hans-Hermann Hoppe, "The Ultimate Justification of the Private Property Ethic," *Liberty* (Sep. 1988): 20–22.

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This is because argumentation is a *conflict-free* way of interacting, by its very nature, since it is an attempt to find what the truth *is*, to establish truth, to persuade or be persuaded by the force of words alone. If one is threatened into accepting the statements or truth-claims of another, this does not tend to get at the truth, which is undeniably a goal of argumentation or discourse. Thus, anyone engaging in argumentation implicitly presupposes the right of self-ownership of other participants in the argument, for otherwise the other would not be able to consider freely and accept or reject the proposed argument. Only as long as there is at least an implicit recognition of each individual's property right in his or her own body can true argumentation take place. When this right is not recognized, the activity is no longer argumentation, but threat, mere naked aggression, or plain physical fighting. Thus, anyone who denies that rights exist contradicts himself since, by his very engaging in the cooperative and conflict-free activity of argumentation, he necessarily recognizes the right of his listener to be free to listen, think, and decide. That is, any participant in discourse presupposes the non-aggression axiom, the libertarian view that one may not initiate force against others.

Thus, Hoppe points out that anyone who would ever deny the ethics underlying the free market is already, by his very engaging in the civilized activity of discourse, presupposing the very ethics that he is challenging. This is a powerful argument because, instead of seeking to persuade someone to accept a new position, it points out to him a position that he already maintains, a position that he *necessarily* maintains. Thus, opponents of liberty undercut their own position as soon as they begin to state it.

Hoppe has extended his argument to show that property rights, in addition to self-ownership rights, are also presupposed by discourse. Hoppe's basic point here is that self-ownership rights are established just because one's body is itself a scarce resource, so other scarce resources must be similarly ownable.[6] Looked at from another angle, participants in argumentation indisputably need to use and control the scarce resources in the world to survive; otherwise, they would perish. But because scarcity makes conflict over the uses of resources possible, only norms that determine proper ownership can avoid conflict over these scarce goods. That such norms are valuable cannot be denied, because anyone who is alive in the world and participating in the practical activity of argumentation cannot deny the value of being able to control scarce resources and the value of avoiding conflicts over such scarce resources.

[6]See note 12, below, for one view of the U.S. Supreme Court regarding the connection between property and other rights.

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So no one could ever deny that norms for determining the ownership of scarce goods are useful for allowing conflict-free exploitation of such resources. But, as Hoppe points out, there are only two fundamental alternatives for acquiring rights in unowned property: (1) by doing something with things with which no one else had ever done anything before, i.e. the Lockean concept of mixing of labor, or homesteading; or (2) simply by verbal declaration or decree. However, a rule that allows property to be owned by mere verbal declaration cannot serve to avoid conflicts, since any number of people could at any time assert conflicting claims of ownership of a particular scarce resource. This type of norm is no better than no norm at all. Only the first alternative, that of Lockean homesteading, establishes an objective (or, as Hoppe calls it, intersubjectively ascertainable) link between a particular person and a particular scarce resource, and thus no one can deny the Lockean right to homestead unowned resources.[7]

ESTOPPEL

Another rationalist-oriented justification of rights is an argument I have developed based on the common-law concept of estoppel.[8] "The word *estoppel* means 'not permitted to deny.' If

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[7]Rothbard gave wholehearted endorsement to Hoppe's argumentation ethics approach early on:

> In a dazzling breakthrough for political philosophy in general and for libertarianism in particular, he [Hoppe] has managed to transcend the famous is/ought, fact/value dichotomy that has plagued philosophy since the days of the scholastics, and that had brought modern libertarianism into a tiresome deadlock. Not only that: Hans Hoppe has managed to establish the case for an-archo-capitalist–Lockean rights in an unprecedentedly hard-core manner, one that makes my own natural law/natural rights position seem almost wimpy in comparison.

Murray N. Rothbard, "Beyond Is and Ought," *Liberty* (Nov. 1988): 44–45, 44. It should be noted that Leland Yeager has recently claimed that Rothbard, who died in January 1995, had changed his mind before his death regarding the validity of Hoppe's argument. Leland B. Yeager, "Book Review," *Review of Austrian Economics* 9 (1996): 181–88 (reviewing Murray N. Rothbard, *Economic Thought Before Adam Smith* and *Classical Economics*, vols. 1 and 2 of *An Austrian Perspective on the History of Economic Thought* [Aldershot, England and Brookfield, Vt.: Edward Elgar, 1995]). Yeager asserts that, based on language in this posthumously-published treatise: "Rothbard no longer endorses Hans-Hermann Hoppe's claim to derive libertarian policy positions purely from the circumstances of discussion itself, without any appeal to value judgments. . . . On the contrary, and as he had done earlier, Rothbard now correctly observes that policy recommendations and decisions presuppose value judgments as well as positive analysis." (p. 185). There is no doubt that Yeager himself sees no merit in Hoppe's argumentation ethics. See Leland B. Yeager, "Raw Assertions," *Liberty* (Nov. 1988): 45–46. However, although the validity of Hoppe's theories do not, of course, depend on Rothbard's support, Yeager's contention about Rothbard's change of mind appears to be completely erroneous and unsupported by any reason or evidence whatsoever.

[8]N. Stephan Kinsella, "Punishment and Proportionality: The Estoppel Approach," *Journal of Libertarian Studies* 12, no. 1 (1996): 51–73; also, N. Stephan

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A makes a statement of fact that B relies on in some substantial way, A will not be permitted to deny it (that is, A will be estopped), if the effect of A's denial would be to injure the party who relies on it."[9] Thus, under the traditional legal principle of estoppel, a person may be prevented, or estopped, from maintaining something (for example in court) inconsistent with his previous conduct or statements. For instance, if a father promises his daughter that he will pay her college tuition for her, and the daughter relies on this promise to her detriment, for example by enrolling in college and becoming obligated to the college for her tuition, then she may be able to recover some of her expenses from her father, even if his original promise is not enforceable as a normal contract (for example, because there was no consideration).[10] The father would be estopped from denying that a contract was formed, even though, technically, one was not.

Drawing on this legal terminology and concept, the approach I urge here may be termed "dialogical" estoppel, or simply estoppel. The estoppel principle shows that an aggressor contradicts himself if he objects to others' enforcement of their rights. Thus, unlike Hoppe's argumentation ethics approach, which focuses on presuppositions of discourse in general, and which shows that any participant in discourse contradicts himself if he denies these presuppositions, the estoppel theory focuses on the discourse between an aggressor and his victim about punishment of the aggressor, and seeks to show that the aggressor contradicts himself if he objects to his punishment.

What would it mean to have a right? Whatever else rights might be, certainly it is the case that rights are legitimately enforceable; that is, one who is physically able to enforce his right *may* not be prevented from doing so. In short, having a right allows one to legitimately punish the violator of the right, or to legitimately use force to prevent another from violating the right. The only way one could be said to *not* have a right would be if the attempt to punish a violator of the right is for some reason unjustifiable. But clearly this problem itself can arise only when the alleged criminal *objects* to being punished, for if criminals consented to punishment we would not face the problem of justifying the punishment.[11]

Kinsella, "Estoppel: A New Justification for Individual Rights," *Reason Papers* 17 (Fall 1992): 61–74.

[9]Bernard F. Cataldo, et al., *Introduction to Law and the Legal Process*, 3rd ed. (New York: John Wiley and Sons, 1980), p. 479. See also American Law Institute, *Restatement (Second) of Contracts* (St. Paul, Minn.: American Law Institute Publishers, 1981), § 90; *Louisiana Civil Code* (St. Paul, Minn.: West Publishing Co., 1996), art. 1967.

[10]See, e.g., *Zimmerman* v. *Zimmerman*, 86 A.D.2d 525, 447 N.Y.S. 2d 675 (Sup. Ct. 1982), from which this example was derived.

[11]Of course, an accused criminal need not engage in discourse with his accuser at all. But if the criminal is to put forward an objection to his punishment, he

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Estoppel argues that we have rights just because no actual criminal—that is, an aggressor—could ever meaningfully object to being punished. Thus, if the only potential obstacle to having a legitimately enforceable right is the unconsenting criminal, and if he is estopped from objecting to his punishment, then we may be said to have the right, since, in effect, the criminal cannot deny this.

Why, then, is this the case? Why is a criminal estopped in this manner? Consider: if *B* is a violent aggressor, such as a murderer or rapist, how could he *not* consent to any punishment that *A*, the victim (or the victim's agent), attempts to inflict? To object to his punishment, *B* must engage in discourse with *A*; he must at least temporarily adopt the stance of a peaceful, civilized person trying to persuade *A*, through the use of reason and consistent, universalizable principles, of why *A* should not punish him. But to do this, *B* must in essence claim that *A* should not use force against him (*B*), and to do this *B* must claim that it is wrong to use force. But since *B has* initiated force, he has admitted that (he believes that) it *is* proper to use force, and *B* would contradict himself if he were to claim the opposite. Since contradictions are always false and since an undeniable goal of discourse is to establish truth, such contradictions are ruled out of bounds in discourse, since they cannot tend to establish truth. Thus, *B* is estopped from making this contradictory assertion, and is therefore unable to object to his punishment.

Under the estoppel theory, then, we may enforce our rights against violent aggressors, since they cannot object to the enforcement of rights without self-contradiction.[12]

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must engage in argumentation and thus be subject to the rules of argumentation. As R.M. Hare noted in a similar context:

> Just as one cannot win a game of chess against an opponent who will not make any moves—and just as one cannot argue mathematically with a person who will not commit himself to any mathematical statements—so moral argument is impossible with a man who will make no moral judgments at all. . . . Such a person is not entering the arena of moral dispute, and therefore it is impossible to contest with him. *He is compelled also—and this is important—to abjure the protection of morality for his own interests.*

R.M. Hare, *Freedom and Reason* (Oxford: Clarendon Press, 1963), § 6.6 (emphasis added).

[12]As Hoppe's argumentation ethics approach grounds self-ownership rights and then is extended to cover property rights, so the estoppel argument may also be extended to cover property rights and the Lockean homesteading principle, essentially by showing that self-ownership rights presuppose the right to homestead, because one is meaningless without the other. See Kinsella, "Punishment and Proportionality," part III.F. As the U.S. Supreme Court has recognized, "The right to enjoy property without lawful deprivation . . . is in truth a 'personal' right. . . . In fact, a fundamental *interdependence* exists between the personal right to liberty and the personal right in property. *Neither could have meaning without the other.* That rights in property are basic civil rights has long been recognized." *Lynch* v. *Household Fin. Corp.*, 405 U.S. 538, 552 (1972) (emphasis added). But see the famous footnote 4 in *United States v. Carolene*

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RIGHTS-SKEPTICISM

A third rationalist type of rights argument concerns the very nature of rights themselves and shows how any rights-skeptic contradicts himself whenever he denies that rights exist. It is similar to the estoppel approach outlined above, although the discourse under examination need not involve an aggressor. Instead, this argument focuses on rights-skeptics who deny the existence of rights, rather than on actual criminals who object to being punished in particular instances for a given crime.

If any right at all exists, it is a right of *A* to have or do *X* without *B*'s preventing it; and, therefore, *A* can legitimately use force against *B* to en*force* the right.[13] *A* is concerned with the enforceability of his right to *X*, and this enforceability is all that *A* requires in order to be secure in his right to *X*. For a rights-skeptic meaningfully to challenge *A*'s asserted right, the skeptic must challenge the *enforceability* of the right, instead of merely challenging the existence of the right. Nothing else will do. If the skeptic does not deny that *A*'s proposed enforcement of his purported right is legitimate, then the skeptic has not denied *A*'s right to *X*, because what it *means* to have a right is to be able to legitimately enforce it. If the skeptic maintains, then, that *A* has no right to *X*, indeed, no rights at all since there are no rights, the skeptic must also maintain that *A*'s enforcement of his purported right to *X* is not justified.

But the problem faced by the skeptic here is that he assumes that enforcement—i.e., the use of force—*requires* justification. *A*, however, cares not that the rights-skeptic merely challenges *A*'s

Products Co., 304 U.S. 144, 152 n.4 (1938) (implying that economic and property rights are less fundamental than personal rights).

[13]Many definitions of the concept "rights" have been offered. See, e.g., Antony Flew, *A Dictionary of Philosophy*, rev'd 2nd ed. (New York: St. Martin's Press, 1984), 306 (defining "rights"); Antony Flew, "What is a 'Right'?", *Georgia Law Review* 13 (1979): 1117–41; Alan Gewirth, "The Basis and Content of Human Rights," *Georgia Law Review* 13 (1979): 1148; Wesley N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, W.W. Cook, ed. (New Haven, Conn.: Yale University Press, 1946), p. 30 *et passim* (discussing four senses of "rights" and explaining that a right is a three-term relation between a right-holder, a type of action, and one or more other persons); Albert Kocourek, *Jural Relations* (Indianapolis: Bobbs-Merrill, 1927); Lomasky, *Persons, Rights, and the Moral Community*, p. 101; Machan, *Individuals and Their Rights*, pp. 1–2; Narveson, *The Libertarian Idea*, p. 41; Nozick, *Anarchy, State and Utopia*, pp. 29–30; Ayn Rand, "Man's Rights," in Rand, *The Virtue of Selfishness*; Rasmussen and Den Uyl, *Liberty and Nature*, p. 111. One of the clearest, non-tautological definitions of rights of which I am aware is James Sadowsky's definition: "When we say that one has the right to do certain things we mean this and only this, that it would be immoral for another, alone or in combination, to stop him from doing this by the use of physical force or the threat thereof. We do not mean that any use a man makes of his property within the limits set forth is necessarily a *moral* use." James A. Sadowsky, "Private Property and Collective Ownership," in *The Libertarian Alternative*, Tibor R. Machan, ed. (Chicago: Nelson-Hall, 1974), pp. 120–21. Whatever the definition, however, it seems clear that the concept of rights and the concept of enforceability are mutually dependent in the sense discussed in the text.

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use of force against *B*. The rights-skeptic must do more than express his preference that *A* not enforce his right against *B*, for such an expression does not attack the legitimacy of *A*'s enforcing his right against *B*. The only way for the skeptic meaningfully to challenge *A*'s enforcement action is to acknowledge that *B* may use force to prevent *A*'s (illegitimate) enforcement action. And here the rights-skeptic (perversely) undercuts his own position, because by recognizing the legitimacy of *B*'s use of force against *A*, the rights-skeptic effectively attributes rights to *B* himself, the right to not have unjustifiable force used against him. In short, for anyone to meaningfully maintain that *A* has no rights against *B* on the grounds that no rights exist, he must effectively attribute rights to *B* so that *B* may defend himself against *A*'s purportedly unwarranted enforcement action.

More common-sensically, this demonstration points out the inconsistency on the part of a rights-skeptic who engages in discourse about the propriety of rights at all. If there are no rights, then there is no such thing as the justifiable or legitimate use of force, but neither is there such as thing as the unjust use of force. But if there is no unjust use of force, what is it, exactly, that a rights-skeptic is concerned about? If individuals delude themselves into thinking that they have natural rights, and, acting on this assumption, go about enforcing these rights as if they are true, the skeptic has no grounds to complain. To the extent the skeptic complains about people enforcing these illusory rights, he begins to attribute rights to those having force used against them. Any rights-skeptic can only shut up, because he contradicts himself the moment he objects to others' acting as if they have rights.[14]

Other Rationalist-Related Theories

In addition to the three approaches outlined above, other arguments, which also point out the inherent presuppositions of discourse or action, are briefly discussed below.

G.B. Madison and Argumentation Ethics-Related Theorists

One approach that is similar to Hoppe's argumentation ethics approach is that of philosopher G.B. Madison. Madison argues that

> the various values defended by liberalism are not arbitrary, a matter of mere personal preference, nor do they

[14]Indeed, another way to respond to a rights-skeptic would be to shoot him. If there are no rights, as he maintains, then he cannot object to being shot. So, presumably, any rights-skeptic would change his position and admit there were rights (if only so as to be able to object to being shot), or we would soon have no more rights-skeptics left alive to give us rights-advocates any trouble.

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> derive from some natural law. . . . Rather, they are nothing less and nothing more than what could be called the *operative presuppositions* or intrinsic features and demands of communicative rationality itself. In other words, they are values that are implicitly recognized and affirmed by everyone by the very fact of their engaging in communicative reason. This amounts to saying that no one can rationally deny them without at the same time denying reason, without self-contradiction, without in fact abandoning all attempts to persuade the other and to reach agreement.[15]

These implicitly recognized values include a renunciation of the legitimacy of violence. Thus, "it is absolutely impossible for anyone who claims to be rational, which is to say human, outrightly to defend violence."[16] Madison continues,

> [Paul] Ricoeur writes: ". . . *violence is the opposite of discourse*. . . . Violence is always the interruption of discourse: discourse is always the interruption of violence." That violence is the opposite of discourse means that it can never justify itself—and is therefore not justifiable—for only through discourse can anything be justified. As the theory of rational argumentation and discussion, liberalism amounts, therefore, to a rejection of power politics.[17]

Madison, like Hoppe, argues that the fact-value gap can be bridged by an appeal to the nature of discourse. "[T]he notion of *universal human rights and liberties* is not an . . . arbitrary value, a matter of mere personal preference. . . . On the contrary, it is nothing less and nothing more than the operative presupposition or intrinsic feature and demand of communicative rational-

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[15]G.B. Madison, *The Logic of Liberty* (New York: Greenwood Press, 1986), p. 266.

[16]Madison, *The Logic of Liberty*, p. 267. Madison and Hoppe both draw on the "discourse ethics" of Jürgen Habermas and Karl-Otto Apel. See, e.g., Jürgen Habermas, "Discourse Ethics: Notes on a Program of Philosophical Justification," and Karl-Otto Apel, "Is the Ethics of the Ideal Communication Community a Utopia? On the Relationship between Ethics, Utopia, and the Critique of Utopia," both in *The Communicative Ethics Controversy*, Seyla Benhabib and Fred Dallmayr, eds. (Cambridge, Mass.: MIT Press, 1990). Professor Rasmussen has criticized both Habermas's discourse ethics, see Douglas B. Rasmussen, "Political Legitimacy and Discourse Ethics," *International Philosophical Quarterly* 32 (1992): 17–34, and Hoppe's argumentation ethics, see Douglas B. Rasmussen, "Arguing and Y-ing," *Liberty* (Nov 1988): 50. This latter article was part of a symposium, "Breakthrough or Buncombe," containing discussion of Hoppe's argumentation ethics by several libertarian theorists.

[17]Madison, *The Logic of Liberty*, pp. 267 and 274, n. 37 (quoting Paul Ricoeur, *Main Trends in Philosophy* [New York: Holmes and Meier, 1979], pp. 226–76). Madison also notes that Frank Knight made a similar point. Madison quotes Knight's statement, in his book *Freedom and Reform* (Indianapolis: Liberty Press, 1982), pp. 473–74, that "The only 'proof' that can be offered for the validity of the liberal position is that we are discussing it and its acceptance is a presupposition of discussion, since discussion is the essence of the position itself. From this point of view, the core of liberalism is a faith in the ultimate potential equality of men as the basis of democracy." See also Frank H. Knight, *On The History and Method of Economics* (Chicago: University of Chicago Press, 1956), p. 268.

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ity itself."[18] In a sense, notes Madison, Thomas Jefferson was not so far off in calling our rights "self-evident."

The general thrust of Madison's argument seems sound, although it is not as consistent or fully developed as Hoppe's argumentation ethics. While Hoppe shows that the non-aggression principle (i.e., self-ownership plus the right to homestead) itself is directly implied by any discourse or argumentation, Madison's train of logic seems more muddled. For instance, he argues that, because discourse has priority over violence, this validates the Kantian claim that people ought to be treated as ends rather than means, which is the principle of human dignity. The principle of freedom from coercion then follows from the principle of human dignity. Madison does not specify in any more detail than this the hard-core libertarian principles that can be derived from such an approach,[19] although, to be fair, Madison stresses that his remarks are intended only "to indicate the way in which liberalism must seek to" defend the values it advocates.[20]

Frank van Dun, similarly, suggests that part of "the ethics of dialogue" is that we ought to respect the "dialogical rights of others—their right to speak or not to speak, to listen or not to listen, to use their own judgment."[21] Van Dun even suggests that "principles of private property and uncoerced exchange" are also presupposed by participants in discourse, although he does not elaborate very much on his theory.[22] Jeremy Shearmur also proposes that a Habermasian argument may be developed to justify individual property rights and other classical liberal principles, although this argument is different in approach from that of Hoppe, Madison, van Dun, and is, in my view, much weaker, at least in its current stage of development.[23]

Other theories that are briefly worth mentioning here include Paul Chevigny's theory that the nature of discourse may be used to defend the right to free speech,[24] and Tibor Machan's

[18]Madison, *The Logic of Liberty*, p. 269.

[19]He does maintain that the supreme "ought" or demand of liberalism is "that conflicts of interest and differences of opinion should be resolved through free, open, peaceful discussion aimed at consensus and not by recourse to force." Madison, *The Logic of Liberty*, p. 266.

[20]Madison, *The Logic of Liberty*, pp. 269–70.

[21]Frank van Dun, "Economics and the Limits of Value-Free Science," *Reason Papers* 11 (Spring 1986): 24; see also Frank van Dun, "On the Philosophy of Argument and the Logic of Common Morality," in *Argumentation: Approaches to Theory Formation*, E.M. Barth and J.L. Martens, eds. (Amsterdam: John Benjamins, 1982), p. 281.

[22]Van Dun, "Economics and the Limits of Value-Free Science," p. 28.

[23]Jeremy Shearmur, "Habermas: A Critical Approach," *Critical Review* 2 (1988): 47; see also Jeremy Shearmur, "From Dialogue Rights to Property Rights: Foundations for Hayek's Legal Theory," *Critical Review* 4 (1990): 106–32.

[24]See Paul G. Chevigny, "Philosophy of Language and Free Expression," *New York University Law Review* 55 (1980): 157–94; Michael Martin, "On a New Argument for Freedom of Speech," *New York University Law Review* 57 (1982): 906–

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view that discourse in general and political dialogue in particular rest on individualist prerequisites or presuppositions.[25]

Murray Rothbard, who was very enthusiastic about Hoppe's argumentation ethics, was also hopeful that Hoppe's argumentation ethics or axiomatic approach could be further extended. As Rothbard stated, "[a] future research program for Hoppe and other libertarian philosophers would be (a) to see how far axiomatics can be extended into other spheres of ethics, or (b) to see if and how this axiomatic could be integrated into the standard natural-law approach."[26] The various perspectives of Hoppe, Madison, van Dun, and others on a similar theme indicate that Rothbard may indeed be correct that this type of rationalist thinking can be further extended in libertarian or ethical theory.[27]

Crocker's Moral Estoppel Theory

In a theory bearing some resemblance to the estoppel theory discussed above, law professor Lawrence Crocker proposes the use of moral estoppel in preventing a criminal from assert-

19; Paul G. Chevigny, "The Dialogic Right of Free Expression: A Reply to Michael Martin," New *York University Law Review* 57 (1982): 920–31. See also Rodney J. Blackman, "There is There There: Defending the Defenseless with Procedural Natural Law," *Arizona Law Review* 37 (1995): 285–353, which defends a procedural natural-law position on the grounds that, as we normally use language and define "law," "law" has a procedural component that, if adhered to, limits a government's arbitrary and irrational use of power. Blackman contends that language users implicitly accept this normative, procedural aspect of what is described as law; they use a definition of law that also limits what state power can be classified as law. A somewhat similar argument may be found in Randy E. Barnett, "Getting Normative, the Role of Natural Rights in Constitutional Adjudication," *Constitutional Commentary* 12 (1995): 93–122, where Professor Barnett argues that those who claim that the U.S. Constitution justifies certain government regulation of individuals are themselves introducing normative claims into discourse, and thus cannot object, on positivist or *wertfrei* grounds, to a moral or normative criticism of their position. See also Randy E. Barnett, "The Intersection of Natural Rights and Positive Constitutional Law," *Connecticut Law Review* 25 (1993): 853–68.

[25]Tibor R. Machan, "Individualism and Political Dialogue," *Poznan Studies in the Philosophy of Science and the Humanities* 46 (June 1996): 45–55.

[26]Rothbard, "Beyond Is and Ought," p. 45.

[27]Madison notes that "it should be possible to derive in a strictly systematic fashion all of the . . . universal values" necessary to defend liberalism. Madison, *The Logic of Liberty*, p. 268. Concerning extending Hoppe's discourse ethics to natural law, it should be pointed out that both Hoppe and Madison appear skeptical of the validity of classic natural law theory. On p. 269, Madison states that rights are not "a requirement of some natural law existing independently of the reasoning process and discernible only by metaphysical insight into the 'nature of things.'"; Hoppe, *Economics and Ethics*, p. 179, states "It has been a common quarrel with the natural rights position, even on the part of sympathetic readers, that the concept of human nature is far 'too diffuse and varied to provide a determinate set of contents of natural law.'" (quoting Alan Gewirth, "Law, Action, and Morality," in *Georgetown symposium on Ethics: Essays in Honor of Henry B. Veatch*, R. Porreco, ed. [New York: University Press of America, 1984], p. 73). However, Machan, accepting the validity of action-based ethical theories (similar to Pilon's and Gewirth's approach, discussed below), but not purely-argumentation-based theories, also maintains that "human action needs to be understood by reference to human nature." See the quote by Machan in note 36, below.

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ing the unfairness of being punished in certain situations.[28] Crocker's theory, while interesting, is not rigorous, and Crocker does not seem to realize the implications of estoppel for justifying only the *libertarian* conception of rights. Rather than focusing on the reciprocity between the force used in punishment and the force of an aggressive act by a wrongdoer, Crocker claims that a person who has "treated another person or the society at large in a fashion that the criminal law prohibits" is "morally estopped" from asserting that his punishment would be unfair. However, Crocker's use of estoppel is too vague and imprecise, for just because one has violated a criminal law does not mean that one has committed the aggression which is necessary to estop him from complaining about punishment. A breached law must first be valid for Crocker's assumption to hold, but as the estoppel theory indicates, a law is valid only if it prohibits aggression. Crocker's theory seems to assume that any law is valid, even those that do not prohibit the initiation of force.

Pilon and Gewirth on the Principle of Generic Consistency

Another rights theory that bears mention here is that of Roger Pilon. Pilon has developed a libertarian version of the rights theory of his teacher, Alan Gewirth.[29] Although he disagrees with the non-libertarian conclusions that Gewirth himself draws from his own rights theory, Pilon builds "upon much of the justificatory groundwork he has established, for I believe he [Gewirth] has located, drawn together, and solved some of the most basic problems in the theory of rights."[30]

To determine what rights we have, Pilon (following Gewirth) focuses on "what it is we necessarily claim about ourselves, if only implicitly, when we act."[31] Pilon argues that all action is conative, that is, an agent acts voluntarily and for purposes which seem good to him. Pilon argues that the prerequisites of successful action are "voluntariness and purposiveness," the so-called "generic features" that characterize all action. Thus an agent cannot help valuing these generic features and even making a rights-claim to them, according to Pilon/Gewirth. From this conclusion, it is argued that all agents also necessarily

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[28]Lawrence Crocker, "The Upper Limit of Just Punishment," *Emory Law Journal* 41 (1992): 1067.

[29]Roger A. Pilon, "Ordering Rights Consistently: Or What We Do and Do Not Have Rights To," *Georgia Law Review* 13 (1979): 1171–96; Roger A. Pilon, *A Theory of Rights: Toward Limited Government* (unpublished Ph.D. dissertation, University of Chicago, 1979). *See also* Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1978), and Alan Gewirth, "The Basis and Content of Human Rights."

[30]Pilon, "Ordering Rights Consistently," p. 1173.

[31]Pilon, "Ordering Rights Consistently," p. 1177.

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claim rights against coercion and harm. And since it would be inconsistent to maintain that one has rights for these reasons without also admitting that others have these rights too (since the reasoning concerning the nature of action applies equally to all purposive actors), such rights-claims must be universalizable.[32] Thus, an agent in any action makes a rights-claim to be free from coercion and harm, since such rights are necessary to provide for the generic features of action, which an agent also necessarily values, and the agent also necessarily grants these rights to others because of the universalizability requirement.

From this point, Pilon/Gewirth develops a sort of modern Categorical Imperative, which is called the "Principle of Generic Consistency" (PGC). The PGC is: "Act in accord with the generic rights of your recipients as well as of yourself." ("Recipients are those who stand opposite agents, who are 'affected by' or 'recipients of' their actions.")[33] Under Pilon's libertarian working of the PGC,

> the PGC does not require anyone to *do* anything. It is addressed to agents, but it does not require anyone to be an agent who has recipients. An individual can "do nothing" if he chooses, spending his life in idle contemplation. Provided there are no recipients of this behavior, he is at perfect liberty to perform it. And if there are recipients, the PGC requires only that he act in accord with the generic rights of those recipients, *i.e.*, that he not coerce or harm them.[34]

Pilon extends his reasoning and works the PGC to flesh out more fully just what (primarily libertarian) rights we do have.

All this is well done, except for one crucial error. As Hoppe points out, it is *argumentation*, not action, that is the appropriate starting point for such an analysis, because,

> from the correctly stated fact that in action an agent must, by necessity, presuppose the existence of certain values or goods, it does not follow that such goods then are universalizable and hence should be respected by others as the agent's goods by right. . . . Rather, the idea of truth, or of universalizable rights or goods only emerges with argumentation as a special subclass of actions, but not with action as such, as is clearly revealed by the fact that Gewirth, too, is not engaged simply in action, but more specifically in argumentation when he wants to convince us of the necessary truth of his ethical system.[35]

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[32]Pilon, "Ordering Rights Consistently," p. 1179.

[33]Pilon, "Ordering Rights Consistently," p. 1184.

[34]Pilon, "Ordering Rights Consistently," p. 1184.

[35]Hoppe, *Economics and Ethics*, p. 181 n.18. Note that Machan seems to agree with Gewirth/Pilon here rather than with Hoppe, claiming that "[D]iscourse is not primary. Instead, it is human action itself that is primary, with discourse being only one form of human action. It is the presuppositions of human action

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It is possible that, despite this error, much of Pilon's work is salvageable by, in effect, moving it to an argumentation context, such as is done in the estoppel approach where an aggressor must engage in argumentation to object to his punishment and is therefore subject to the unique constraints of argumentation. In other words, the weak link in Pilon's PGC chain may be able to be repaired by considering claims made *about* prior actions when the agent later objects to punishment, for an objection to being punished requires the agent to enter into the special subclass action of argumentation, to which criteria such as universalizability do apply. I do not maintain here that such an approach will definitely work, or that all of the remainder of Pilon's rights *corpus* can be salvaged in this manner, but such a possible remedy does seem promising.

CONCLUSION

Under the first three theories outlined above—argumentation ethics, estoppel theory, and the self-contradictions of rights-skeptics—we can see that the relevant participant in discourse cannot deny the validity of individual rights. These rationalist-oriented theories offer, in my opinion, very good defenses of individual rights, defenses that are more powerful than many other approaches, because they show that the opponent of individual rights, whether criminal, skeptic, or socialist, presupposes that they are true. Critics must enter the cathedral of libertarianism even to deny that it exists. This makes criticism of libertarian beliefs hollow: for if someone asks why we believe in individual rights, we can tell them to look in the mirror and find the answer there.

that require certain political principles to be respected and protected. And human action needs to be understood by reference to human nature." Machan, "Individualism and Political Dialogue," p. 45. For further criticism and discussion of the Gewirthian argument, see Machan, *Individuals and Their Rights*, pp. 197–99; Alisdair MacIntyre, *After Virtue* (Notre Dame, Indiana: University of Notre Dame Press, 1981), pp. 64–65; Henry Veatch, *Human Rights: Fact or Fancy?* (Baton Rouge: Louisiana State University Press, 1985), pp. 159–60; and Jan Narveson, "Gewirth's *Reason and Morality*: A Study in the Hazards of Universalizability in Ethics," *Dialogue* 19 (1980): 651–74.

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HAYEK'S ROAD TO SERFDOM

Walter Block*

The work of Hayek, in contrast with the Marxist-Socialist-Interventionist-Galbraithian paradigm that held sway in the mid-20th century, appears as a beacon for free enterprise amidst a sea of totalitarianism. When considered in comparison to the writings against which he contended, Hayek's was a lonely voice, crying in the wilderness for freedom; he stood, like the Dutch boy, with his finger in the dike of onrushing statism.[1]

But if one weighs his output against that of free enterprise advocates who came later,[2] or, better yet, against an ideal of laissez-faire capitalism, then one must categorize Hayek as lukewarm, at best, in his support of this system.[3] This is a rather surprising thesis, even a paradoxical one, in view of the fact that 1994 was the 50th anniversary of Hayek's *Road to Serfdom*,[4] a book widely (and accurately!) credited with turning away from socialism the political thinking of an entire generation.[5] It is therefore incumbent upon an author, such as myself, who makes such a claim, to offer evidence in support of it. Let us consider the record.[6]

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[1]This may be a bit too strong, since there were other voices, alongside that of Hayek, who championed much the same philosophy, and did it more consistently. Preeminent amongst these must of course be Mises. For a study of the American "Old Right" tradition, see Justin Raimondo, *Reclaiming the American Right* (Burlingame Calif.: Center for Libertarian Studies, 1993).

[2]Cf. Murray N. Rothbard, "Law, Property Rights, and Air Pollution," *Cato Journal* 2, no. 1 (Spring 1982), reprinted in Walter Block, ed., *Economics and the Environment: A Reconciliation* (Vancouver: Fraser Institute, 1990); Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism: Economics, Politics and Ethics* (Boston: Kluwer, 1989); Hans-Hermann Hoppe, *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy* (Boston: Kluwer, 1993).

[3]John Gray, "F.A. Hayek on Liberty and Tradition," *Journal of Libertarian Studies* 4, no. 2 (Spring 1980): 119–37; Arthur M. Diamond, "F.A. Hayek on Constructivism and Ethics," *Journal of Libertarian Studies* 4, no. 4 (Fall 1980): 353–66; Roger Arnold, "Hayek and Institutional Evolution," *Journal of Libertarian Studies* 4, no. 4 (Fall 1980): 341–52.

[4]Friedrich A. Hayek, *The Road To Serfdom* (Chicago: University of Chicago Press, 1944).

[5]Perhaps, though, the fact that Keynes lavishly praised this book should have given us pause for thought. See Diamond, "F.A. Hayek on Constructivism and Ethics," p. 353.

[6]I write this paper with not a few misgivings. Hayek was always exceedingly kind to me, both personally and in writing; for example, see his forward to Walter Block, *Defending the Undefendable* (New York: Fox and Wilkes, [1976]

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ROAD TO SERFDOM

It cannot be denied that this book was a war cry against central planning. However, in making the case against socialism, Hayek was led into making all sort of compromises with what otherwise appeared to be his own philosophical perspective—so much so, that if a system was erected on the basis of them, it would not differ too sharply from what this author explicitly opposed.

First of all, one searches in vain for a *principle*, such as the non-aggression axiom of libertarianism,[7] which would serve as a rudder with which to steer the ship of political-economic philosophy. As a matter of fact, Hayek specifically renounces the *possibility* of a principle: "There is nothing in the basic principles of liberalism to make it a stationary creed; there are no hard-and-fast rules fixed once and for all." Not only is there no principle, he specifically singles out free enterprise as precisely the *wrong* path: "Probably nothing has done so much harm to the liberal cause as the wooden insistence of some liberals on certain rough rules of thumb, above all the principle of laissez faire."[8] Lacking such an axiom[9] or postulate, Hayek needlessly weakens his case for the market.[10]

At one point, perhaps unconsciously, he even adopts the mindset of precisely the people he is ostensibly criticizing. He states:

1991). In criticizing him now, part of me feels as if I am "biting the hand that fed me." The reason I finally decided to take pen to hand on this topic is that I feel I owe Hayek my best thoughts; it would seem a dishonesty, and a renunciation of the scholarship for which he stood all of his life, to "pull punches" out of considerations of friendship. We all, that is, the best of us, encourage our students to be critical about our own viewpoints, Hayek no less than anyone else. It is in this spirit, then, that I take up the arduous task of criticism.

For a contrasting view of Hayek, see Peter J. Boettke, "Hayek's *The Road to Serfdom* Revisited: Government Failure in the Argument Against Socialism," *Eastern Economic Journal* 21, No. 1 (Winter 1995): 7–26; and also Peter J. Boetke, "The Theory of Spontaneous Order and Cultural Ecolution in the Social Theory of F.A. Hayek," *Cultural Dynamics* 3, np. 1 (1990): 61–83.

[7]Cf. Murray N. Rothbard, *The Ethics of Liberty* (Atlantic Highlands, N.J.: Humanities Press 1982); Hoppe, *A Theory of Socialism and Capitalism*; Hoppe, *Economics and Ethics*; Anthony de Jasay, *The State* (Oxford: Basil Blackwell, 1985).

[8]Hayek, *The Road to Serfdom*, p. 17.

[9]We consider below, and reject, the hard-and-fast principle adumbrated in Friedrich A. Hayek, *The Constitution of Liberty* (Chicago: Henry Regnery, 1960), pp. 397–411.

[10]Take, for example, his reiteration (*The Road to Serfdom*, pp. 3, 5, 8) that it is "largely people of good will" who are responsible for the slide into socialism in North America and western Europe. As a rhetorical device, this is unexceptionable. How better to convince a largely hostile audience of the error of their ways than by first complimenting them? But a strong case can be made for the very opposite contention. Cf. Helmut Schoeck, *Envy: A Theory of Social Behavior* (New York: Harcourt Brace & World, 1966); and Walter Block, "Socialist Psychology: Values and Motivations," *Cultural Dynamics* 5, no. 3 (1992): 260–86.

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> The attitude of the liberal toward society is like that of the gardener who tends a plant and, in order to create the conditions most favorable to its growth, must know as much as possible about its structure and the way it functions.[11]

But what is this if not the central-planning mentality? People are like chess pieces, to be moved around the board at the behest of the relatively all-knowing chess master. It seems to have escaped Hayek that his goals may be different than theirs. This may well be the perspective taken on by a Hayek-type liberal, but things are very different for the classical liberal, the one who advocates economic freedom. For the latter, people are not at all like vegetables, or inanimate chess pieces. On the contrary, they are adult human beings with goals and desires of their own, which must be respected.

MONEY

Now to specifics. Hayek calls for exceptions to the rule of laissez-faire capitalism with regard to "handling of the monetary system." Later, he reiterates this Keynesian point: "There is . . . the supremely important problem of combating general fluctuations of economic activity and the recurrent waves of large-scale unemployment which accompany them."[12]

But why should the macro monetary and fiscal systems be given over to the tender mercies of the government? There is good and sufficient reason to believe that state control has lead at different times to the very destabilization, inflation, depression and self-aggrandizement that Hayek incorrectly assumes is a result of the operation of the market.[13] Can it be said that these two cited works post-dated *The Road to Serfdom*, and that as a result Hayek could be excused for not being aware of them? Not a bit of it, for Mises made many of the same points, and his work was published long before the publication of Hayek's.[14] Mises was Hayek's mentor and teacher; Hayek could not possibly have been ignorant of this tome. Furthermore, Hayek's own

[11]Hayek, *The Road to Serfdom*, p. 18.

[12]Hayek, *The Road to Serfdom*, p. 18.

[13]Milton Friedman and Anna J. Schwartz, *A Monetary History of the U.S., 1867–1960* (New York: National Bureau of Economic Research, 1963); Murray N. Rothbard, *America's Great Depression* (Kansas City: Sheed and Ward, 1975).

[14]Ludwig von Mises, *The Theory of Money and Credit* (New York: The Foundation for Economic Education, [1912] 1971).

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writings demonstrated precisely how government monetary policy leads to temporal misallocations of investment (e.g., to depressions).[15] Paradoxically, our author has himself made significant contributions to the Austrian theory of the business cycle, which convincingly demonstrates the imprudence of granting to the state expansionary monetary power. The Hayek of 1944, then, stands condemned by the Hayek of 1931 and 1933.

HOURS OF WORK

In chapter 3 of *The Road to Serfdom*, Hayek makes further concessions to socialism. He starts off this discussion ominously by warning against "a dogmatic laissez-faire attitude." And what roles does he assign the state? One of them is ". . . to limit working hours."[16]

But this is a violation of basic rights. Surely consenting adults have a right to contract with one another for a mutually agreeable work week. If this amounts to 50, or 100, or even 150 hours per week, it should be no one else's business.

Further, this socialist policy is a recipe for disaster. Interventionists of all stripes try to take credit for the decline in the length of the work day. In their view, rapacious capitalists would never have allowed labor output to decline to a daily eight hours had this decision been left up them. Were it not for the benevolent effects of compulsory legislation, this could not have occurred. Had the government not mandated this situation, we would still, even nowadays, be working 14-hour days. But logic and common sense are incompatible with this thesis. The reason we work fewer hours than our great-great-grandfathers is that improved technology and skills have so enhanced productivity that we have taken part of the increase in the form of enhanced leisure. There is compelling evidence that legal enactments in and of themselves cannot bring about any such state of affairs. Suppose, then, that the government had limited the work week to 40 hours, but did this in a century when, because of extreme poverty, labor typically lasted twice that duration. Instead of increasing leisure, such an enactment would amount to a death warrant for millions of people who were unable to keep body and soul together in so few hours. How, then, to account for the "success" of hours legislation? After all, nothing like this occurred in our history. The answer is simple: as productivity boosts allowed us to work for fewer

[15]Friedrich A. Hayek, *Monetary Theory and the Trade Cycle* (New York: Kelley, [1933] 1966); Friedrich A. Hayek, *Prices and Production* (London: Routledge, 1931).

[16]Hayek, *The Road to Serfdom*, p. 37.

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hours, the government declared that the new levels would be required by law. Some observers, such as Hayek, were misled by this state of affairs into thinking that the law actually *caused* the fall in work effort. In fact, labor legislation only took credit for a situation which was already occuring anyway, and would have continued to occur even in the absence of such legislation.

WELFARE FOR ALL

Continues our author, "nor is the preservation of competition incompatible with an extensive system of social services."[17] Later he states:

> There is no reason why in a society which has reached the general level of wealth which ours has attained . . . security against severe physical privation the certainty of a given minimum of sustenance . . . should not be guaranteed to all without endangering general freedom. . . . There can be no doubt that some minimum of food, shelter and clothing, sufficient to preserve health and the capacity to work, can be assured to everybody.[18]

But this is highly problematic, again, both on moral and pragmatic grounds. With regard to the former, the only justified transfer of funds between one citizen and another is based on voluntarism. That is, if a church, or the Salvation Army, or the Shriners gives money to the poor, it is based on non-compulsory contributions. In contrast, a system of social services, let alone "an extensive" one, can only be financed through the force implicit in the tax-subsidy system.

As for the effects, they have been little short of disastrous.[19] Disrespect for law and order, teenage pregnancy, crime, the break-up of the family, and even the failure of the family to form in the first place, have all been the results of this policy. To be sure, the worst excesses of the welfare system were not at all apparent at the time of Hayek's writing. However, he is widely thought of as an advocate of capitalism, and this is but one more in a long list of counter-examples to that thesis.

As for Hayek's contention that we can engage in activities of this sort on a massive scale without endangering freedom,

[17]Hayek, *The Road to Serfdom*, p. 37.

[18]Hayek, *The Road to Serfdom*, p. 120.

[19]See Charles Murray, *Losing Ground: American Social Policy from 1950 to 1980* (New York: Basic Books, 1984).

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there is little reason to be optimistic. With large-scale welfare has come the welfare-rights movement; the rent-seeking society we have become as a result has endangered freedom if only because of the sheer size of governmental budgets. As state expenditure has catapulted its way toward 50% of the G.N.P., it has become a real question as to whether we still live in the free society.

MARKETS

But this by no means even begins to scratch the surface of the tasks to which Hayek assigns government. He states, "The functioning of . . . competition . . . requires adequate organization of certain institutions like . . . markets, and channels of information."[20] Unfortunately, this is somewhat vague. Does he mean that stock markets, bond markets, commodities markets, futures markets, flea markets, and other institutions dedicated to promoting buying and selling are somehow unable to be organized privately? If so, this is nonsense. If not, it is exceedingly difficult to discern to what this might apply. Similarly for information channels: what, pray tell, does this imply? That the private sector cannot run schools, newspapers, libraries, computers, radio and television? All of these services have at one time or place been organized privately. To be sure, governments have also subjected these to their own monopoly control. But our guide to liberalism offers us no reasons for supposing that these are best left to the tender mercies of the state. If this is not what Hayek had in mind, the operational definition of channels of information is somewhat obscure.

With regard to the economics of knowledge and information, Hayek equates "fraud and deception" with "exploitation of ignorance."[21] But there is all the world of difference between the two. Fraud and deception are equivalent to theft. If you agree to purchase 5 pounds of potatoes from me for $1.29, and I agree to sell them to you for this amount, but in the event I put 5 pounds of worthless rocks in the bag, then I have in effect stolen the money from you. On the other hand, suppose you are ignorant of prevailing prices, and agree to buy these potatoes from me for $1,000. Then, I can accurately be said to have exploited your ignorance of market conditions. But have I stolen from you? Not if knowledge is an economic good. And if it is not, it would surely be improper for me to charge you for imparting any of it, such as giving you a piano lesson, teaching you

[20]Hayek, *The Road to Serfdom*, p. 38.

[21]Hayek, *The Road to Serfdom*, p. 39.

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mathematics, or consulting with you as an economist. The implication of this Hayekian point would be a maximum fixed price of zero for the sale of information; surely this is a recipe for a shortage of supply. The detail missed by this economist is that this is precisely how markets operate. A market is one vast arena which exploits ignorance by taking advantage of it, that is to say, by profiting from it. In doing so, of course, the market promotes knowledge, and thus abolishes ignorance. If a whole community is unenlightened as to the true price of potatoes, the community will pay speculators to divert this foodstuff to them, of course at high exploitative prices. But in so doing, the community and the speculators will *reduce* the very ignorance involved in the initial transaction, thereby driving *down* the terms of trade in subsequent transactions.

NEIGHBORHOOD EFFECTS

Then, too, there is a concept that has led astray more than a few otherwise astute economists: externalities. In Hayek's view,

> There are, finally, undoubted fields where no legal arrangements can create the main condition on which the usefulness of the system of competition and private property depends: namely, that the owner benefits from all the useful services rendered by his property and suffers for all the damages caused to others by its use. Where, for example, it is impracticable to make the enjoyment of certain services dependent on the payment of a price, competition will not produce the services; and the price system becomes similarly ineffective when the damage caused to others by certain uses of property cannot be effectively charged to the owner of that property.[22]

To put this into more modern jargon, the argument is that if there are external economies, or positive external benefits, free ridership will at the very least lead to an under-allocation of resources into the industry, and in the extreme case to no provision whatsoever. That is, if the entrepreneur cannot be paid for all of his good works, he will soon come to realize that it is an

[22]Hayek, *The Road to Serfdom*, p. 38. In *Individualism and Economic Order* (Chicago: Regnery, 1972), p. 111, Hayek states: "In a modern community [there are] a considerable number of services which are needed, such as sanitary and health measures, and which could not possibly be provided by the market for the obvious reason that no price can be charged to the beneficiaries or, rather, that it is not possible to confine the benefits to those who are willing or able to pay for them."

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error to provide them in the first place. Moreover, if there are external diseconomies, namely, if people can ruin the property of others without being forced to pay for these damages, again there will be a misallocation of resources: too much will go into such activities, and not enough into others. In either of these cases, if economic welfare is to be maximized, the state must step in to rectify these imbalances. Laissez-faire capitalism is heir to both of these so-called market failures and must be reined in by government.

These doctrines have been subjected to refutation elsewhere[23] so there is no need to rehearse these arguments in their entirety; a brief summary may suffice.

Take external economies first. One difficulty is that this argument is a veritable Pandora's box. Once open, it is (logically) impossible to close again. If Hayek could claim for his other advocacies of government intervention that they were at least limited in scope compared to the breadth accorded the state by his intellectual enemies the central planners, no such defense is available to him in this case. For the externality argument will justify practically any and all government activity. Yes, national defense and picturesque parks give off external economies, but so do window flower boxes, the use of soap, and smiling at each other. Thus, if it is justified for government to intervene in the first set of cases, then it is equally justified for the government to intervene in the second. However, if the state offers subsidies to people for taking baths, planting flower boxes, purchasing orthodontia services, and using breath mints, then there is little or nothing from which it can be precluded. One test of the logical coherence of an argument is its generalizability. This one obviously fails—if only in that it proves too much, far too much.[24]

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[23]Walter Block, "The Justification of Taxation in the Public Finance Literature: A Critique of Atkinson and Stiglitz, Due, Musgrave and Shoup," *Journal of Public Finance and Public Choice*, no. 3 (Fall 1989): 141–58; Walter Block, "Canadian Public Finance Texts Cannot Justify Government Taxation: A Critique of Auld & Miller; Musgrave, Musgrave & Bird; McCready; and Wolf," *Canadian Public Administration* 36, no. 1 (Fall 1993): 225–62; Jeffrey Hummel, "National Goods vs. Public Goods: Defense, Disarmament and Free Riders," *Review of Austrian Economics* 4 (1990): 88–122; Hoppe, *A Theory of Socialism and Capitalism*; Hoppe, *Economics and Ethics*; Murray N. Rothbard, *Power and Market* (Kansas City: Sheed Andrews and McMeel, 1977); Ronald H. Coase, "The Lighthouse in Economics," *Journal of Law and Economics* 17 (1974): 357–76.

[24]Wearing clothes, eating food, playing the piano, taking recreation, and living in a house are all instances of benefiting others without being able to charge them for conferring theses advantages. For if someone didn't indulge in food, clothing or shelter, he would die, and thus be unable to be part of civilization, which helps us all. If I play the piano, my neighbors enjoy the "free" concerts. If I play handball, all those who see it are immeasurably enriched by the experience. Yet, clods that they are, they would object strenuously if I billed them for my efforts.

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Then, too, there is the problem of subjectivity: "one man's meat is another's poison." If it cannot be denied that national defense is an external economy for most ordinary people, then it also cannot be *dis*proven that it is an external *dis*economy for the pacifist and the person who favors our enemy over this country. How, without resort to invalid interpersonal comparisons of utility, can we unambiguously conclude that these things really promote external *benefits*?

And even if we stipulate, for the sake of argument, that there really *are* free riders gaining from the investments of others, there are still ways to internalize the externality. We announce to the Soviets, or the Cubans, or the Bosnians, or whoever are the bad guys at a given time, that Joe Blow has not contributed to the defense fund, and that he is therefore fair game.[25] This ought to get them to think twice about trying to free ride on the defense expenditures of others. As for the case of parks, the increase in the real estate values of the surrounding areas *can* be captured by the entrepreneur in question. After all, he is the only one who knows beforehand its precise location. Surely he can buy up enough options so as to capture a significant portion of this increased value.[26]

Now consider external diseconomies. These subdivide into two further categories, pecuniary externalities and real ones. In the former case, a business locates across the street from a competitor, depriving him of some of his customers. Because of the advent of the new firm, the old one suffers financially. But should the "victim" have a case in law against the "perpetrator?" Of course not. For should this be allowed, the whole idea of free markets and competition would be nipped in the bud. From an ethical perspective, the newcomer has not violated any right of the original firm, since it did not own the customer. Rather, the commercial relationship, in the absence of a long term contract, is a voluntary one; it can be canceled—on either side—for any reason whatsoever (such as a better competing offer, as in this case) or for no reason at all.

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[25]Perhaps we could give a bumper sticker or name tag to all those who have paid, so as to lower transactions costs.

[26]Of course, it cannot be denied that he will not attain all of it. Therefore, there will be some inefficiency compared to the situation in which he could. But this still does not justify government action even on economic welfare grounds without the implicit premise that government management of parks will be perfect.

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The second type is more serious. Here, the injured party suffers from smoke inhalation, or soot particles on his property, or from excessive noise or from chemical inundations. Stopping such acts should be the very essence of law, as it is in the case of other trespasses against person or property, such as murder, rape, theft, assault and battery, etc.

Here, Hayek maintains that

> there are, finally, undoubted fields where no legal arrangements can create the main condition on which the usefulness of the system of competition and private property depends: namely, that the owner benefits from all the useful services rendered by his property and suffers for all the damages caused to others by its use.[27]

But this is mistaken. It is simply not true that no legal arrangements can force the owner to suffer for all the damages caused to others by the use of his private property. There *is* a legal arrangement dedicated to that very purpose. It is called the system of private-property rights and laissez-faire capitalism. Contrary to Hayek, there is no market failure here. Rather, this is a case of government failure, namely, government's failure to promote property rights through the penalization, fining, and incarceration of those who violate such rights. The state has indeed passed laws against trespass; if I personally drive across your lawn, or dump my garbage on it, there is little doubt that I will be stopped. However, if I first incinerate the identical garbage, and them dump it on your lawn in the form of soot particles, I may not be stopped, since for many years the law has turned a blind eye to this violation.[28]

Mises stands as a corrective to Hayek in this regard. Mises states:

> When in the past in many countries the owners of factories and railroads were not held liable for the damages which the conduct of their enterprises inflicted on the property and health of neighbors, patrons, employees and other people through smoke, soot, noise, water pollution, and accidents caused by defective or inappropriate equipment, the idea was that one should not undermine the progress of industrialization and the development of transportation facilities.[29]

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[27]Hayek, *The Road to Serfdom*, p. 38.

[28]Morton J. Horwitz, *The Transformation of American Law: 1780–1860* (Cambridge, Mass.: Harvard University Press, 1977); Rothbard, "Law, Property Rights, and Air Pollution."

[29]Ludwig von Mises, *Human Action* (Chicago: Regnery, 1966), p. 655. Actually, Mises would have been better off excluding from his list of victims both patrons and employees. Both of these are contractually related to the polluting firm. Thus, for them, these costs are not external; rather, they are internal and volun-

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And again:

> It is true that where a considerable part of the costs incurred are external costs from the point of view of the acting individuals or firms, the economic calculation established by them is manifestly defective and their results deceptive. *But this is not the outcome of alleged deficiencies inherent in the system of private ownership of the means of production.* It is on the contrary a consequence of loopholes left in this system.[30]

HEALTH AND ACCIDENT INSURANCE

Bill and Hillary Clinton are surely missing a bet in their initiative to socialize the American health care industry by not prominently citing Hayek in this regard. They can truly claim that *even* Hayek, arch defender of free markets, agrees with them. States this so-called advocate of capitalism:

> Nor is there any reason why the state should not assist the individuals in providing for those common hazards of life against which, because of their uncertainty, few individuals can make adequate provision. Where, as in the case of sickness and accident, neither the desire to avoid such calamities nor the efforts to overcome their consequences are as a rule weakened by the provision of assistance—where, in short, we deal with genuinely insurable risks—the case for the state's helping to organize a comprehensive system of social insurance is very strong.[31]

Again, there is first and foremost the moral argument. It is nothing else than theft to force people to give their money over to purposes desired by others. If the gunman (truly) replies to objections from outraged victims that he is giving the proceeds of the robbery over to those who are in need of medical insurance, such Robin Hoodism still amounts to stealing.[32]

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tary, in that these people, in making their commercial arrangement with the polluter, thereby agree to take these costs into consideration. The economics of this is simple. Suppose there are two firms equal in every way except that one pollutes and the other does not. Then the former will have to pay higher wages than the latter to attract a work force. This additional amount serves as the compensation for pollution; it converts a victim into a contractual partner.

[30]Mises, *Human Action*, pp. 657–58 (emphasis added).

[31]Hayek, *The Road to Serfdom*, pp. 120–21.

[32]The fact that this coercive transfer occurs under the guise of democracy changes this claim not one whit. Why should mere majority rule justify anything? After all, Hitler came to power in this manner, and the U.S. government which supported slavery for a century, and Jim Crow legislation for decades,

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But the economic case in opposition is no less cogent. Hayek claims, in effect, that there is no moral hazard involved in health or accident insurance. But this is problematic, as the demand curve for medical services, as is the case of all demand curves, slopes in a downward direction. People will demand more physician and hospital care at a zero (at an insured) price than they will at a market-clearing rate. That is to say, they will use more if they are insured than if they are not. This is why every socialized-medicine scheme ever proposed has ended up costing far more than contemplated. The beauty of free enterprise is that private companies *compete* with one another in an effort to eliminate such behavior. Through a series of techniques such as deductibles, surveys, and lower rates for those who do not smoke or overeat, a private insurance industry allows customers to pool such risks. Under capitalism, those firms which are inept at this form of consumer protection are forced into bankruptcy. *This* is the advantage of the market vis-a-vis the state.

Hayek claims

> to the same category belongs also the increase of security through the state's rendering assistance to the victims of such "acts of God" as earthquakes and floods. Whenever communal action can mitigate disasters against which the individual can neither attempt to guard himself nor make provision for the consequences, such communal action should undoubtedly be taken.[33]

But there are problems here, too. First, there is nothing wrong with so-called communal action if this is interpreted as voluntary charity. Basic welfare economics tells us that both parties gain from such relationships. The donor gains, otherwise he would not contribute; the recipient gains, otherwise he would not accept the gift. However, the case of the tax-subsidy system, which Hayek clearly favors, is very different. Since at least one side of this transaction is coercive, we are not entitled to deduce a welfare gain. Moreover, it is simply incorrect to assert that the victim cannot attempt to guard himself from floods or earthquakes or other acts of God. Certainly, he can reduce the probability of earthquakes by moving out of southern California. Flood risk may be mitigated by locating far

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was also a product of this system. Ballot counting is no guarantee of right conduct. Tyranny of the majority is perhaps a more accurate description. Nor can this be denied by the subterfuge of claiming that all members of a democracy *agree* to be bound by majority vote. There is no proof of any such contention since, typically, no one or very few people signed the constitution, as brilliantly demonstrated by Lysander Spooner in his classic work *No Treason: The Government of No Authority* (Larkspur, Colorado: Pine Tree Press, [1870] 1966).

[33]Hayek, *The Road to Serfdom*, p. 121.

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away from the Mississippi River or from the sea shore. Californians, and people in low-lying areas adjacent to bodies of water, should certainly be free to choose to live there. But why should the rest of us be forced to pay for their locational decision?

RENT CONTROL

Hayek joins the broad consensus of the rest of the economics profession in condemning rent control.[34] Indeed, his analysis is forthright and absolute: "If this account seems to boil down to a catalogue of iniquities to be laid at the door of rent control, that is no mere coincidence, but inevitable." However, when it comes to *lifting* rent controls, it is as if an entirely different person—a socialist—took over the Hayekian pen.

Let us allow Hayek to speak for himself on this issue:

> A conviction that an open market is *per se* the most desirable condition is of course far from an assertion that the immediate abolition of rent control as things are is the most effective method of achieving it. . . .
>
> Were controls to be lifted suddenly, these changes would inevitably take place on such a scale that the market would be utterly disorganized, with all the resulting dangers. . . . This pressure (excess demand) would be aggravated by the absence of a ceiling on rents. Attempts would undoubtedly be made to push rents up to grotesque levels, and in the initial confusion they would probably succeed.[35]

Instead of immediate decontrol, our author proposes a much more gradual process: forbidding tenants from transmitting their controlled rights to their children, encouraging the already free sector of the housing market, initially decontrolling rents in only large scale dwellings. In order to ameliorate the plight of tenants even so gradually removed from rent control statutes, Hayek would "require landlords to give long notice periods, while allowing tenants to give shorter ones."[36]

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[34]Friedrich A. Hayek, "The Repercussions of Rent Restrictions," *Rent Control: Myths and Realities*, Walter Block, ed. (Vancouver: Fraser Institute, 1981), p. 182; cf. Bruno S. Frey, Werner W. Pommerehne, Friedrich Schneider, and Guy Gilbert "Consensus and Dissension Among Economists: An Empirical Inquiry," *American Economic Review* 74, no. 5 (December 1984): 986–94.

[35]Hayek, "The Repercussions of Rent Restrictions," p. 183.

[36]Hayek, "The Repercussions of Rent Restrictions," pp. 184, 185.

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Although it sounds moderate and reasonable, this policy prescription will not withstand careful analysis. It is akin to staunchly opposing slavery while nevertheless withholding consent from a plan to *free* the slaves immediately. Yes, to free the slave *immediately* will without question create confusion. Better to phase it out gradually, over a period of years? To ask this question is to answer it. For how could it be justified, if one had the power to end this curious institution, to instead continue it, whether for years, months, weeks, days, hours, minutes or even *seconds*? One would almost be guilty of aiding and abetting slavery if one who had the power to end it declined to do so.[37] A similar argument applies to the Hayekian position on rent control. Even though he explicitly attacks this law, he holds back from advocating its immediate demise.

Not only is his ethical sense wanting in this regard, his economic analysis suffers this flaw as well. He fears more than anything else the rise of rents to "grotesque levels" if decontrol occurs too quickly. Why? It must be because in most cases the controlled rents are but a small fraction of what they would be if they were free, and he worries that a sudden move from one to the other will play havoc with the economy. To be sure, new supplies will dampen any incipient price increase, but because of the nature of the accommodation, this cannot occur for a number of years. It is to hold off rent increases until this new supply comes on stream that our author wishes to go slow on decontrol. This concern is unjustified, however; Hayek ignores the space misallocation effect.

As rent control artificially lowers rents, it also artificially misallocates space. Under rent control, people with large apartments who no longer need them have little incentive to vacate. For example, an older woman whose husband has died and whose adult children have moved out will remain anyway, closing off the rooms she no longer needs, rather than move into a smaller, higher-priced housing unit in the free sector. But if controls are suddenly ended, this consideration no longer applies. Now, other things equal, rents will once again be roughly proportional to unit size. When our older woman moves out of her 12-room dwelling and takes on one of only 3 rooms, it is as if 9 rooms have been created at the snap of a finger. If so, an additional supply of housing is *immediately* created. Long before new dwelling space can be built, it *still* comes on stream in the very short run. This is one reason why we need not dread astronomical rent rises, even upon instantaneous decontrol.

[37]Not quite, however, since under the libertarian code of law no positive acts of aid are required; one is constrained only to refrain from initiations of force. Mere refusal to "press a button" freeing all the slaves cannot be construed as coercive.

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SAVING THE MARKET

There is a long history of intellectual attempts to defend the practice of "saving the market" or "promoting competition" by urging government intervention to this end. Hayek, unfortunately, joins this tradition in calling for the state to "make competition as effective and beneficial as possible—and to supplement it where, and only where, it cannot be made effective."[38]

To be sure, he tries to distance his position from that of the socialists by making the following distinction:

> What I mean by "competitive order" is almost the opposite of what is often called "ordered competition." The purpose of a competitive order is to make competition work; that of so-called "ordered competition," almost always to restrict the effectiveness of competition.[39]

But this is a distinction without a real difference. In *both* cases the government will not leave the marketplace to its own devices; in *both* cases the public sector is impinging on the private; in *both* cases the proponents of these schemes, Hayek as well as the avowed central planners, *say* they are urging intervention in order to improve things.

The Hayekian position is tantamount to asking the fox to guard the chicken coop, or trying to put out a fire by pouring oil on it. Foxes and chickens, oil and water, have different and contradictory underlying principles. It is to the advantage of the fox to attack; of the chicken to defend (or be defended by the farmer). Oil feeds a fire, water puts it out. In like manner, the market and government are also organized upon different incompatible principles. In the former case, mutual agreement is the watchword; in the latter, the use of force. Now it would be one thing if Hayek were to limit his defense of state action to: ". . . prevention of violence and fraud . . . (and) the protection of certain rights, such as property and the enforcement of contracts. . . ."[40] A case can conceivably be made that here the two institutions are complementary, not incompatible. But Hayek goes much further than this. Let us consider yet another example.

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[38]Hayek, *The Road to Serfdom*, p. 110.

[39]Hayek, *The Road to Serfdom*, p. 111.

[40]Hayek , *The Road to Serfdom*, pp. 110–11.

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ANTI-TRUST

According to Hayek,

> We cannot regard "freedom of contract" as a real answer to our problems if we know that not all contracts ought to be made enforceable and in fact are bound to argue that contracts "in restraint of trade" ought not to be enforced.[41]

In the view of Hayek:

> The price system will fulfill this function only if competition prevails, that is, if the individual producer has to adapt himself to price changes and cannot control them.[42]

In fact, Hayek goes so far as to call for "multiple damages" in the case of "contracts in restraint of trade."[43]

And what is wrong with monopoly? It is coercive. He states:

> A monopolist could exercise true coercion . . . if he were, say, the owner of a spring in an oasis. Let us say that other person settled there on the assumption that water would always be available at a reasonable price and then found, perhaps because a second spring dried up, that they had no choice but to do whatever the owner of the spring demanded if they were to survive; here would be a clear case of coercion.[44]

Rothbard's refutation is definitive:

> Yet, since the owner of the spring did not aggressively poison the competing springs, the owner is scarcely being 'coercive'; in fact, he is supplying a vital service, and should have the right either to refuse a salve or to charge whatever the customers will pay. . . . Both actions are within his rights as a free man and a just property owner.[45]

Rothbard goes on to postulate the single doctor in the community who can successfully cure people from an epidemic. Is this monopolist to be forced by law not to take a vacation at

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[41]Hayek, *Individualism and Economic Order*, p. 115.

[42]Hayek, *The Road to Serfdom*, p. 49.

[43]Friedrich A. Hayek, *Studies in Philosophy, Politics and Economics* (New York: Simon and Schuster, 1967), p. 177.

[44]Hayek, *The Constitution of Liberty*, pp. 397–411.

[45]Rothbard, "Law, Property Rights, and Air Pollution," p. 221; see also Ronald Hamowy, "Law and the Liberal Society: F.A. Hayek's Constitution of Liberty," *Journal of Libertarian Studies* 2, no. 4 (Winter 1978): 287–97.

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that very point in time? Is he to be subjected to price controls for his services? As long as this physician did not *start* the epidemic, it would be slavery to compel him to serve sick people on any terms other than mutual agreement.

The problem with the Hayekian economic analysis is that once again it runs smack dab into interpersonal comparisons of utility. It is all well and good to conclude from the *existence* of a trade that both parties to it gain at least in the *ex ante* sense. In the case of the purchase of potatoes for $1.29 (and *also* for $1,000, if that is the agreed upon sale price), each party values what the other is to give him more than what he is to give up, so both gain. But it is quite another matter to conclude from the *failure* of a trade to be consummated that one is exploiting the other, or that it *should* have taken place, or that economic welfare will be reduced *unless* it occurs. For in this latter case,[46] we *cannot* deduce that each party values what the other is to give him more than what he is to give up. On the contrary, we can only conclude that one person values what he now has more than what he would receive in the trade. Under these circumstances, can we assert that the trade would be mutually beneficial? No. If we demand that it take place anyway, in the name of "economic welfare," we must maintain that the person who wants to trade will gain more from it than will be lost by the person who refuses to go along. But if this is not engaging in the logically illicit practice of interpersonal utility comparisons, then nothing is.

AN ADDENDUM

In rereading the above material, I cannot help but be conscious of the fact that I am accusing no less than F.A. Hayek, world renowned for his advocacy of free markets, winner of the Nobel Prize in economics in 1974 for precisely this reason (amongst others), of actually being only at best a lukewarm supporter of this philosophy, and often actively supporting its very opposite. It is therefore incumbent upon me to tread carefully; to leave no stone unturned in an effort to ascertain whether these charges can really be true; to bend over backwards, even, in an attempt to support the opposite thesis of my own.

[46]We assume that both parties are aware of the possibility of this trade, so that we can rule out ignorance.

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Unhappily for the mainstream view of Hayek as free enterpriser, further research shows even the more that his views toward the market can best be characterized as ambivalent. One way to tell if our protagonist was serious about the views he expressed in *The Road to Serfdom* is to compare that work with what he had to say about these issues 50 years later. Another way is to monitor his statements on these subjects one year after this book was published (e.g., in 1945). If Hayek takes much the same positions in 1944 and 1945, and then again in 1994, it is a fair bet that these reflect his true perspective; moreover, that these views expressed on capitalism reflect his life long thinking on these matters. Fortunately, Hayek reveals his thoughts in these latter two time periods. Unfortunately, they demonstrate even more that his adherence to the freedom philosophy is rather superficial.

What are the specifics? First, Hayek gives "a complete transcription of a radio broadcast among Hayek and two University of Chicago Professors on April 22, 1945," both of whom were avowed socialists. In the course of this three-way discussion, Hayek offers his views on competition. He states:

> [T]here are two basic and alternative methods of relying upon competition, which, if it is to be made effective, requires a good deal of government activity directed toward making it effective and toward supplementing it where it cannot be made effective.[47]

And again Hayek: ". . . so far as the government plans for competition or steps in where competition cannot possibly do the job, there is no objection."[48] Later in the book, Hayek reinforces this point, when he is questioned by yet another interviewer:

> Alex Leijonhufvud: "But the essential point is whether competition is provided or not, not whether the government is in this line of activities."
>
> Hayek: "Exactly."[49]

What are we to make of all this?[50] There are, of course, two senses in which the word "competition" can be understood. First is the neoclassical–structuralist view, according to which we determine whether competition exists on the basis of how

[47]Friedrich A. Hayek, *Hayek on Hayek: An Autobiographical Dialogue*, Stephen Kresge and Leif Wenar, eds. (Chicago: University of Chicago Press, 1994), p. 111; the entire broadcast transcription begins on p. 108.

[48]Hayek, *Hayek on Hayek*, p. 123.

[49]Hayek, *Hayek on Hayek*, p. 149.

[50]Is there anything here that cannot be supported, here, and enthusiastically so, by President William Clinton? Or by Robert Reich? Or by Laura Tyson?

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many competitors there are. If one, two or a few, or some dozens or so, there is, respectively, monopoly, duopoly, oligopoly and monopolistic competition. All of these are non-competitive and, hence, at least potentially grist for the Anti-Trust Division of the so-called Justice Department. Only if there are hundreds of thousands of competitors, each one accounting for but a small part of the industry, are perfectly competitive conditions approached. In sharp contrast to this mainstream perspective, the Austrians adopt the behaviorist model. Whether competition exists depends not one whit upon the number of competitors. Instead, this is determined solely on the basis of whether or not competition is legal.[51] For many years, IBM and ALCOA were the only entrants in their respective "industries."[52] Yet, they were as competitive as it was possible to be, since the government would not jail or fine anyone who wished to compete against them. On the other hand, there are thousands of taxi cabs in New York City and only one U.S. Post Office delivering first class mail. Yet it is illegal to compete against either.[53] So both are monopolies, equally so, the vastly different number of competitors in each case notwithstanding.

How can we interpret Hayek in this regard? Strangely, for a supposed Austrian economist, he defends the mainstream view. He clearly has in mind the number of competitors and not whether entry is legal or not.[54] There is no other way to understand Hayek when he says that competition ". . . requires a

[51]See Murray N. Rothbard, *Man, Economy and State* (Los Angeles: Nash, 1962); also Dominick T. Armentano, *Antitrust and Monopoly: Anatomy of a Policy Failure* (New York: Wiley, 1982).

[52]There is a dispute between the two philosophies of competition over this concept. For the structuralists, there must be a clear and objective definition. If it is vague and amorphous, we cannot determine the number of competitors in an industry and thus their relative shares. Without being able to do this, the structuralist position falls apart, since their definition of competition requires objective numbers. The behaviorists, in contrast, maintain that "industry" cannot so easily, or at all, be objectified. There are no hard and fast lines between computers, aluminum, pianos, fish, bicycles and carrots, for example. Within certain ranges or limits, these goods can all compete with one another for the consumer's dollar.

[53]On taxis, see Walter Williams, *The State Against Blacks* (New York: McGraw-Hill, 1982).

[54]Sometimes this is characterized as "free entry" but this is a misnomer. Under real-world laissez-faire capitalism, entry is rarely "free" in that it typically costs something in the form of resources invested. But it is always free in the sense that government imposes no legal barriers against it. The concept "free entry" oftentimes (in neoclassical thought) leads to a conflation of these two very different senses of freedom; e.g., when it is objected that entry is really not free since it costs money to open a business.

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good deal of government activity directed toward making it effective and toward supplementing it where it cannot be made effective."[55] Contrary to Hayek, legalized entry doesn't require anything at all of government; only that it refrain from imposing penalties on competing. How else are we to understand supplementing competition apart from subsidizing competitors, in order, presumably, to increase their numbers? What can it possibly mean that "competition cannot possibly do the job,"[56] other than that there are too few competitors for Hayek's taste? Even a *zero* number of competitors (let alone one!) is compatible with the existence of competition in the praxeological sense. Right now, there are no firms (zero!) engaged in the business of transporting goods to and from Mars, nor of bringing green cheese down from the moon to the earth. Not a single entrepreneur has so far seen fit to enter either of these potentially profitable[57] and lucrative fields of endeavor. Thus, "competition cannot possibly do the job." Are we to understand from Hayek that this apparent market failure justifies government action? It is difficult to understand him in any other way. There is a vestige of free-enterprise sentiment in Hayek when he allows that government need not provide a service if only private entrepreneurs do.[58] But this is very vestigial indeed, since he is on record as supporting state activity "whenever" (!) private companies are not forthcoming. Hayek claims to oppose central planning, but this is hard to reconcile with his views of government supplementing the market for its alleged failure to attain competition.

Let us now consider a rather long passage in the discussion Hayek had with the two socialist University of Chicago professors, Krueger and Merriam. I quote this at great length lest I be accused of falsely portraying Hayek's views:

> Mr. Krueger: "What about limitation of working hours—a maximum-hours act? Is that compatible with your notions of proper planning?"
>
> Mr. Hayek: "*Yes*, if it is not carried too far.[59] It is one of these regulations which creates *equal conditions* throughout the system.[60] But, of course, if it does beyond the

[55]Hayek, *Hayek on Hayek*, p. 111.

[56]Hayek, *Hayek on Hayek*, p. 123.

[57]Well, perhaps some day, anyway.

[58]Hayek, *Hayek on Hayek*, p. 149.

[59]Even Clinton, et al., do not wish to carry their interferences with the market "too far." On the contrary, they want only reasonable and moderate interferences with free enterprise.

[60]Since when does the free enterpriser advocate "equal conditions throughout the system?"

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point where it accords with the general situation of the country, it may indeed interfere very much. . . ."

Mr. Merriam: "Would any limitation on the hours of labor be objectionable in your judgment?"

Mr. Hayek: "Not 'any,' but they can be. There you have one of the instances where *my objection is not one of principle* but one of degree. It is one of the things which cannot be made to fit the question of the cost involved in that particular measure."

Mr. Krueger: "Is a minimum wage law permissible?"

Mr. Hayek: "*A general, flat minimum wage law for all industry is permissible,* but I do not think that it is a particularly wise method of achieving the end. I know much better methods of providing a minimum for everybody.[61] But once you turn from laying down a general minimum for all industry to decreeing particular and different minima for different industries, then, of course, you make the price mechanism inoperative, because it is no long the price mechanism which will guide people between industries and trades."[62]

Mr. Merriam: "What about the TVA?"

Mr. Hayek: "There is a great deal of the TVA to which no economist in repute, *and certainly not the laissez-faire people,*[63] will object. Flood control and building of dams are recognized functions of the government. I am under the impression that a good deal else has been tacked on to this scheme, which need not have been done by public enterprise. But the principle of flood control and the like's being provided by the government is an entirely legitimate and a necessary function of the government."[64]

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[61]The compulsory governmental program to transfer money from rich to poor which Hayek advocates is certainly incompatible with laissez-faire capitalism.

[62]And a flat minimum for all industries *will* allow the price mechanism to operate?

[63]Moderate defenders of capitalism will, of course, support many government "contributions" to the economy, such as dams and flood control; but certainly this does not apply to those who call for laissez-faire capitalism.

[64]For an alternative view, one which explores the case for private rivers, and thus private dams and flood control, see Walter Block, "Institutions, Property Rights and Externalities: The Case of Water Quality," *Agriculture and Water Quality: Proceedings of an Interdisciplinary Symposium,* Murray H. Miller, J. E.

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Mr. Merriam: "Even if it involved a development of hydroelectric power, as the TVA does?"

Mr. Hayek: "That depends upon the circumstances. If the hydroelectric power really could not have been provided by private enterprise, *I have no objection.*"[65]

Mr. Merriam: "That is not a matter of logic but of practical adjustment."

Mr. Hayek: "The whole question of whether you can or cannot create competitive conditions is a question of fact."

Mr. Merriam: "Not of logic?"

Mr. Hayek: "All I am arguing about is that, where you can create a competitive condition, you ought to rely upon competition.

Mr. Krueger: "Is a comprehensive system of social insurance a violation of your definition of good planning?"

Mr. Hayek: "*Certainly not a system of social insurance as such,* not even with the government helping to organize it. The only point where the problem can arise is how far to make it *compulsory*[66] and how far, incidentally, it is used to strengthen the monopolistic actions of trade unions, because that is one way in which it may well eliminate competition."

Mr. Merriam: "You do not mean to say that you would be against any government social insurance, would you? You want to make it entirely optional?"

Mr. Hayek: "It might well be made optional, which is not in contradiction to its being government assisted,[67] but why it needs to be made compulsory I do not see in the least."[68]

Mr. Krueger: "One of the reasons was that a great many people, the population at large, was supposed to get it. That was the reason for making it compulsory. I think that everybody is pretty well agreed on that.

FitzGibbon, Glenn C. Fox, R.W. Gillham, and H.R. Whiteley, eds. (Guelph: University of Guelph Press, 1992), pp. 191–208.

[65]Shades of the moon and Mars. Will Hayek really support government doing *anything* private enterprise declines to do? It would appear so. How about jumping off the proverbial roof?

[66]Even Presidential candidate Barry Goldwater wanted to make social security voluntary.

[67]It most certainly is in contradiction to its being government assisted, since government obtains its funds through compulsory tax revenues.

[68]This sounds good, but is contradictory to Hayek's general philosophy. See below.

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Mr. Hayek: "I do not know about that."

Mr. Krueger: "What do you think of a minimum guarantee of food, clothing and shelter to people? Is that a violation of your definition of proper planning?"

Mr. Hayek: "What do you mean by a 'minimum guarantee'? I have always said that I am in favor of a minimum income for every person in the country."[69]

Mr. Merriam: "You used that in your own book (*The Road to Serfdom*). What did you mean by it?

Mr. Hayek: "I will restate it in my own way—I mean to secure a minimum income on which every one can fall back. You have it, of course, very largely in the form of unemployment insurance."

Mr. Merriam: "When Krueger used that term, you seemed disturbed."

Mr. Hayek: "No, he turned it into a specific guarantee of particular things."

Mr. Krueger: "That was an exact quotation."

Mr. Merriam: "Of your book."

Mr. Krueger: "A minimum guarantee of food, clothing, and shelter. If that is permissible, then I am glad to hear you say so, because you do go considerably further than that. In the international field you want a power which can restrain the different nations from actions harmful to their neighbors. It seems to me that you do allow far more of public planning than most of the readers of your book in this country have assumed."[70]

I submit that these are not the views of a defender of the free-enterprise system. This is not to say that there were no sentiments compatible with capitalism expressed in this interview. For example, Hayek did come out foursquare against parity

[69]Here is the contradiction to Hayek's statement above about making things voluntary. How can a program be voluntary if it applies to "every person in the country?" Does he really expect total unanimity? And why, pray tell, should it be just "every person in the country?" What about foreign aid? Shouldn't the rich countries be forced to help people in poor countries? Do rights end at national borders?

[70]Hayek, *Hayek on Hayek*, pp. 112–14, emphasis added.

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prices for farmers and tariffs.[71] But this if far too little and too late. The spectre of these two socialists pushing Hayek into socialist positions would be bad enough, but the truth of the matter is that they really didn't have to push too hard. Hayek was in effect their willing collaborator. There are no truer words than those of Krueger which ended this citation: Hayek is indeed way further to the left than many people had assumed. But this is precisely the thesis of the present essay.

Or am I being too harsh with the co-winner of the 1974 Nobel Prize in economics? After all, Hayek did most of his work during the years when socialism was in the ascendancy, morally, intellectually, and spiritually. Maybe his many compromises with socialism and central planning were the best that could be expected in this era.

This is a tempting hypothesis. After all, I take no pleasure in pointing out the clay feet here. For a long time, until I read him more carefully, I too considered Hayek one of the champions of free enterprise. Unfortunately, it will not suffice. There were many other authors writing at about the same time, several of whom wrote even before Hayek, when the prospects for liberty were, if anything, even worse. Consider the works of Ayn Rand, Henry Hazlitt, Ludwig von Mises, Lysander Spooner, Leonard Read, Benjamin Tucker. These scholars made far fewer compromises with state intervention into the economy than Hayek. Thus, it is problematic to resort to the epoch in which he wrote as an explanation for Hayek's interventionistic views. The long and the short of it is that he was a rather weak and conflicted supporter of the market—one who for some reason was widely interpreted as a staunch and radical proponent of economic freedom.

CONCLUSION

There is little doubt that Hayek deserves his reputation as a defender of economic freedom—but only compared to his contemporaries who, with only a few honorable exceptions, were almost totally immersed in interventionistic philosophy. However, when compared either to some ideal standard, or to numerous modern commentators, it is clear that Hayek falls short of a clear unambiguous advocate of the free marketplace.

[71]Hayek, *Hayek on Hayek*, p. 115.

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LITERATURE REVIEW

Compiled and Edited by N. Stephan Kinsella*

Beginning with this issue of the *Journal of Libertarian Studies*, this section will provide short descriptions of recent scholarly articles expounding on libertarian theory or otherwise of special interest to libertarians. The articles listed will be drawn exclusively from non-libertarian periodicals, since specialized libertarian fora are well-known sources of libertarian theory. Thus, we will not review articles appearing in the following journals: *Independent Review, Reason Papers, Harvard Journal of Law and Public Policy, Journal des Economistes et des Etudes Humaines, Critical Review, Michigan Law and Policy Review, Cato Journal, Journal of Legal Studies, Public Interest Law Review, Journal of Law and Economics, Review of Austrian Economics, The Freeman, Reason, Liberty, Objectivity*, or the like; nor will we review position papers, pamphlets, or monographs published by think tanks. Likewise, recently published books are not included, primarily because most significant libertarian books are reviewed in at least one of the well-known libertarian fora, such as this very journal, *Laissez Faire Books, Reason, Liberty*, or *The Freeman*.

For practical reasons, this first installment is limited to articles having a publishing date of 1995. Additionally, a separate subsection provides the titles only of selected articles appearing in 1994. For previous libertarian-related literature, one useful source is the recently published booklet, *Conservative and Libertarian Legal Scholarship: An Annotated Bibliography*.[1] The Institute for Humane Studies also provides a regular email list of "Recently published works by IHS friends and alumni."[2]

The articles listed below are listed alphabetically by author, with special items such as entire issues of journals or symposia listed first. Unless otherwise noted, the abstract has been prepared by the editor, often with generous and unattributed borrowing from the article's introduction, conclusion, and/or main body, or by adapting or reprinting an abstract provided by the

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[1]Compiled by Roger Clegg and Michael E. DeBow; published by the Federalist Society. This *Bibliography* may be obtained from The Federalist Society for Law & Public Policy Studies, 1700 K Street, N.W., Suite 901, Washington D.C. 20006; (202) 822–8138.

[2]For further information, contact Paul Feine at pfeine@gmu.edu or browse http://osf1.gmu.edu/~ihs/.

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author or published along with the article. In the interest of brevity, unnecessary verbiage, such as "the author argues that . . .", is frequently omitted from these abstracts. It should be understood that any restatement of an article's premises, arguments, or conclusions should not be taken to imply agreement with the points restated, by the editor of this Literature Review or by the editors of the *Journal of Libertarian Studies.*

Readers who are aware of articles that should be considered for inclusion in this Literature Review section are encouraged to send copies of articles or related information directly to the editor, Mr. Kinsella. Authors are requested to provide an abstract of their articles, preferably 100 words or less.

1995 ARTICLES

"Symposium: The Federalist Society: Reinventing Self-Government: Can We Still Have Limits on National Power?" *Cornell Journal of Law and Public Policy* 4 (Spring 1995). Includes articles by Richard A. Epstein, Malcolm Wallop, and others.

Ajani, Gianmaria, "By Chance and Prestige: Legal Transplants in Russia and Eastern Europe," *American Journal of Comparative Law* 43 (1995): 93–117. Post-socialist legislators have turned to pre-socialist sources of law, such as the civil-law methodology of the continent (Western Europe). Anglo-American common-law, commercial, and private-law principles are increasingly influencing continental scholars and judges. The article questions how and to what extent legislation can act as an important factor in the creation of market economies, including a question of whether legislation can effectively be "borrowed" from other legal systems. [See Morriss, 1995, and Watson, 1994, below.]

Amar, Akhil Reed, and Jonathan L. Marcus, "Double Jeopardy Law after Rodney King," *Columbia Law Review* 95 (January 1995): 1–59. The Double Jeopardy Clause of the Fifth Amendment provides that no person should be tried for the same offence twice. The Supreme Court's dual-sovereignty doctrine provides that two different governments (i.e., a state and the federal government) may, however, each try a defendant for essentially the same actions. The dual-sovereignty doctrine should be abandoned, with certain exceptions for offences by state officials. Other flaws with the Court's double-jeopardy jurisprudence are examined, using the Rodney King trial as an example. [See also Susan N. Herman, "Reconstructing the Bill of Rights: A Reply to Amar and Marcus's Triple Play on Double Jeopardy," *Columbia Law Review* 95 (June 1995): 1090.]

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Amar, Akhil Reed, and Renee B. Lettow, "Fifth Amendment First Principles: The Self-Incrimination Clause," *Michigan Law Review* 93 (1995): 857. Carefully examines the text, structure, and history of the Fifth Amendment's Self-Incrimination Clause and criticizes the Supreme Court's failure to do so. [See Amar, 1994, below.]

Barnett, Randy E., "Foreword: Guns, Militias, and Oklahoma City" [in "Symposium: The Second Amendment and the Right to Keep and Bear Arms"], *Tennessee Law Review* 62 (Spring 1995): 443. Discusses concerns of citizens who have come to distrust government. The federal government has acted far beyond its enumerated powers, and has denied protected rights, such as the right to bear arms, frustrating citizens through its dishonest interpretation of its powers and arrogant dismissal of their concerns. This makes the legal process appear more partisan and less legitimate, leading to massive distrust by pro-Second Amendment citizens. Brutal measures such as the Waco and Ruby Ridge/Randy Weaver incidents convey a message that the federal government is willing to use deadly, paramilitary force against its citizens who do not capitulate. Legislators and others have come to take it for granted that citizens will obey any law, regardless of the law's adherence to constitutional principles. They are endangering the delicate legitimacy of the law-making process, and "risking the permanent disaffection of significant segments of the people." Government should fully respect the scheme of enumerated and limited federal powers and the rights retained by the people—including "the right of the people to keep and bear arms."

———, "Getting Normative: The Role of Natural Rights in Constitutional Adjudication," *Constitutional Commentary* 12 (Spring 1995): 93–122. Those who enact laws claim that the laws are not unjust and that citizens have a moral duty to obey them, which presupposes that these binding laws do not infringe natural rights. For such laws to be legitimate, they must be enacted by some process that assures that the laws have this rights-respecting quality. Under our constitution, judges have the role of scrutinizing legislation to ensure that enacted laws do not infringe the people's natural rights.

Becker, Joseph, Comment, "Procrustean Jurisprudence: An Austrian School Economic Critique of the Separation and Regulation of Liberties in the Twentieth Century United States," *Northern Illinois University Law Review* 15 (1995): 671–718. Uses both Austrian economic theory (e.g., Ludwig von Mises and Murray N. Rothbard) and Austrian economic legal and ethical theory such as that of Rothbard and Hans-Hermann Hoppe, to criticize two precepts of U.S. constitutional jurisprudence: (1) that economic liberties are inherently different from

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fundamental liberties, can be conceptually separated, and should be afforded different levels of scrutiny and protection under the U.S. Constitution; and (2) that economic regulation benefits society as a whole and passes the minimal rational-basis test of constitutional review.

Benson, Bruce L., "An Exploration of the Impact of Modern Arbitration Statutes on the Development of Arbitration in the United States," *Journal of Law, Economics, and Organization* 11 (October 1995): 479–501. The claim that arbitration is effective primarily because of the threat of court-imposed sanctions is not backed by evidence but is only an assumption. Arbitration statutes commanding courts to recognize arbitration settlements and arbitration clauses were not the stimulus for the growth of arbitration that they are often assumed to have been. Nonlegal sanctions clearly provide sufficient backing for arbitration to be effective in many circumstances. E.g., use of arbitration was widespread in the late 1700s to early 1800s while common-law judges were hostile to it; and arbitration expanded starting in the 1830s regardless of whether judges were supportive of arbitration.

Benson, Bruce L., David W. Rasmussen and David L. Sollars, "Police Bureaucracies, Their Incentives, and the War on Drugs," *Public Choice* 83 (1995): 21–45. After 1984, local law enforcement agencies in the U.S. substantially increased arrests for drug offenses relative to arrests for property and violent crimes. This paper explores why this reallocation of police resources occurred, focusing on alternative public interest and bureaucratic self-interest explanations. The Comprehensive Crime Act of 1984 is shown to have altered the incentives of police agencies by allowing them to keep the proceeds of assets forfeited as a result of drug-enforcement activities. Empirical evidence is presented which shows that police agencies can increase their discretionary budgets through the asset-forfeiture process.

Blackman, Rodney J., "There is There There: Defending the Defenseless with Procedural Natural Law," *Arizona Law Review* 37 (1995): 285–353. Legal positivists like Austin, Kelsen, Hart, and Joseph Raz maintain that law can be separated from morality. Others like Aquinas, John Finnis, and Lon Fuller maintain the natural-law position that there is a necessary connection between law and morality. Natural-law theories are either substantive or procedural. Blackman defends a procedural natural-law position, arguing that, as normally defined, law has a procedural component that, if adhered to, limits a government's arbitrary and irrational use of power. Language users implicitly accept this normative, procedural aspect of what is described as law. Further, to some extent, this analysis dissolves the traditional conflict between natural-law theorists and positivists,

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since even positivists use a definition of law that also limits what state power can be classified as law. [See Sebok, 1995, below.]

Boettke, Peter J., "Hayek's *The Road to Serfdom* Revisited: Government Failure in the Argument Against Socialism," *Eastern Economic Journal* 21, no. 1 (Winter 1995): 7–26. Hayek has been misread even by pro-market intellectuals, who maintain that Hayek failed to adequately address subsequent developments in socialist, interventionist, and even pro-market theory. They allege that he ignored developments such as public-choice theory, and "was content simply to beat the intellectually dead horse of central planning." Boettke attempts "to reconstruct his argument in *The Road to Serfdom*, survey the reaction to his argument by his contemporaries, elaborate on why his argument was misunderstood by his contemporaries and subsequent generations, and finally explain the continuing relevance of his thesis concerning the failure of government to either control or supplant the market mechanism in a manner consistent with the principles of liberal democracy."

Bolick, Clint, "Thatcher's Revolution: Deregulation and Political Transformation," *Yale Journal on Regulation* 12 (Summer 1995): 527. Discusses British Prime Minister Margaret Thatcher's program of deregulation. Examines the challenges Thatcher faced, the principles and strategies she used to meet them, and the application of those principles and strategies to her particular circumstances. Assesses the results of her efforts, and synthesizes some broadly applicable lessons from the "Thatcher Revolution" that are relevant for deregulatory innovation elsewhere.

Boudreaux, Donald J., Jody Lipford, and Bruce Yandle, "Regulatory Takings and Constitutional Repair: the 1990s Property-Rights Rebellion," *Constitutional Political Economy* 6, no. 2 (Summer 1995): 171–90. In spite of the Constitution's Fifth Amendment prohibition against uncompensated property takings, politicians systematically impose almost confiscatory land-use restrictions on citizens. Growth of regulation and property-rights uncertainty have spawned grass roots opposition and political efforts to reinforce constitutional protections. Lacking success at the national level, property-rights advocates moved to the states where by August 1994 more than 40 introduced property-rights legislation. Statistical estimates of the likelihood that such legislation would be introduced reveal strong support of the notion that the property-rights movement is a reaction to growth of government regulation. [See Clegg, 1995, Epstein, 1995 (*Nollan* and *Dolan*), and Marzulla, 1995, below.]

Brietzke, Paul H., "Self-Determination, or Jurisprudential Confusion: Exacerbating Political Conflict," *Wisconsin International Law Journal* 14 (Fall 1995): 69. Somewhat confused,

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non-libertarian discussion of the status of the right under international law to self-determination of various national groups within established states. Article is nonetheless somewhat interesting, given the relative paucity of libertarian writing on international law and secession. [See Wellman, 1995 (Defense of Secession), and Gauthier, 1994, below.]

Byrne, Donna M., "Progressive Taxation Revisited," *Arizona Law Review* 37 (Fall 1995): 739. The case for progressive taxation is uneasy even for its proponents because of largely unexamined philosophical assumptions underlying their arguments. Byrne tries to make these assumptions explicit. She examines the traditional arguments for and against progressive taxation, and the philosophical approaches of John Rawls, Ronald Dworkin, and Robert Nozick to issues of fairness, to explain why the case for progressivity is uneasy although the notion of progressivity, itself, may be intuitively appealing. [See Mcgee, 1996, above, and Schoenblum, 1995, below.]

Carter, Ian, "The Independent Value of Freedom," *Ethics* 105 (1995): 819–45. Presents a case for viewing freedom as valuable as such, as having value independently of the value of the particular things it leaves us free to do.

Chester, Ronald, "Essay: Is the Right to Devise Property Constitutionally Protected?—The Strange Case of *Hodel* v. *Irving*," *Southwestern University Law Review* 24 (1995): 1195. Not a libertarian, Chester points out that Jefferson and others argued that the rights to receive and transmit property at the owner's death were merely civil, not natural rights. Inheritances could thus be regulated, taxed, or otherwise freely altered by Congress or state legislatures, and this view was supported by early Supreme Court case law. Nevertheless, a recent Supreme Court case seems to declare that the right to pass on property at death is a constitutionally protected property right. This case, however, will not likely have substantial effects except in limited circumstances.

Clegg, Roger, "Reclaiming the Text of the Takings Clause," *South Carolina Law Review* 46 (1995): 531. The Supreme Court has fashioned a three-part balancing test for determining when government actions—especially regulatory actions—that diminish the value of private property constitute a compensable taking. This article explains which elements of this test can and which cannot be reconciled with the text of the Takings Clause, discusses more generally the application of the text to regulatory takings, and calls for a rule rather than a balancing approach. [See Boudreaux, 1995, above, and Epstein, 1995 (*Nollan* and *Dolan*), and Marzulla, 1995, below.]

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Epstein, Richard A., "Surrogacy: The Case for Full Contractual Enforcement," *Virginia Law Review* 81 (1995): 2305. In one type of surrogacy contracts, the sperm of the biological father is used to impregnate the designated female surrogate, and the resulting offspring becomes by contract the exclusive child of its biological father, later to be adopted by his spouse. Epstein argues that "the case for full enforcement of these contracts is fully defensible, notwithstanding the urgent pleas for their unenforceability, regulation, or prohibition." This is not merely an ad hoc inquiry; Epstein bases his conclusion on a more comprehensive theory assessing the strength and weakness of a general system of voluntary exchange.

———, "The Status-Production Sideshow: Why the Antidiscrimination Laws Are Still A Mistake," *Harvard Law Review* 108 (March 1995): 1085. Provides various reasons against antidiscrimination laws, and critiques new arguments in favor of such civil rights laws. "The key social task is to minimize the level of public force in human affairs, which only the repeal and not the enforcement of the civil rights laws can achieve."

———, "History Lean: The Reconciliation of Private Property and Representative Government," *Columbia Law Review* 95 (April 1995): 591. Responds to a prior article by Martin Flaherty which examined Bruce Ackerman's, Cass Sunstein's, and Epstein's theories of constitutional interpretation, and which critiqued Epstein's view that historical debates need not be automatically resorted to in interpreting the Constitution, where the intended meaning is found in the ordinary words used in the Constitution as understood in the popular discourse at the time of its adoption.

———, "Introduction: The Harms and Benefits of *Nollan* and *Dolan*," *Northern Illinois University Law Review* 15 (Summer 1995): 477; and **Epstein, Richard A., and William H. Mellor, III, "*Dolan v. City of Tigard*: Brief of the Institute for Justice as Amicus Curiae in Support of Petitioners,"** *Northern Illinois University Law Review* 15 (Summer 1995): 493 [both in "Symposium: Discretionary Limits in Local Land-Use Control"]. The latter reprints *amicus curiae* brief filed in the Supreme Court case concerning the limits on government power when conditioning the right to use and develop one's property on the surrender of other property to the government without compensation. Argues that the takings clause requires that the government must use public funds for public improvements in cases such as this one, where a landowner's building permit is conditioned on her granting a greenway and bicycle path that benefit the community at large. The former article discusses the since-decided *Dolan* case and a related case. [See Boudreaux, 1995, and Clegg, 1995, above, and Marzulla, 1995, below.]

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Feofanov, Dmitry N., "Luna Law: The Libertarian Vision in Heinlein's *The Moon is a Harsh Mistress*," *Tennessee Law Review* 63 (Fall 1995): 71. Robert Heinlein's classic sci-fi novel is an extended presentation of the individualist, libertarian political philosophy. Feofanov compares current legal institutions to those posited in Heinlein's book, to help understand what caused our own legal systems to emerge. With Heinlein's book for contrast, Feofanov points out several foundational theoretical fallacies of the current American legal regime.

Gordon, Doris, "Abortion and Rights: Applying Libertarian Principles Correctly," *Studies in Prolife Feminism* 1, no. 2 (Spring 1995): 121. Abortion choice requires and promotes such false ideas as: (1) There are two tiers of humanity under unalienable rights, persons and non-persons. Abortion kills non-persons, thus is not homicide. (2) Abortion is merely abandonment, letting die, not killing. (3) Children have no right to parental support and protection from harm. (4) Legalized abortion and abandonment follow from libertarianism's non-aggression principle. Using non-religious reasoning, Gordon, President of Libertarians for Life, argues that abortion is unjust homicide. She uses a libertarian framework of unalienable rights and obligations to examine evidence regarding pregnancy and abortion, and shows why the prenatal child has the right to be in the mother's womb. [See Rice, 1995, below.]

Hasnas, John, "The Myth of the Rule of Law," *Wisconsin Law Review* 1995 (1995): 199–233. Despite common belief to the contrary, there is no such thing as "a government of laws and not people" (the so-called "rule of law"). Such a myth serves to maintain the public's support for society's power structure. The maintenance of liberty requires not only the abandonment of the ideal of the rule of law but also the commitment to a monopolistic legal system. The preservation of a truly free society requires liberating the law from state control to allow for the development of a market for law.

———, "From Cannibalism to Caesareans: Two Conceptions of Fundamental Rights," *Northwestern University Law Review* 89, no. 3 (Spring 1995): 900–41. The legal conception of rights has changed, for the worse, over the last century, from the "classical" conception of legal rights, in which rights are viewed as indefeasible, morally fundamental entities that protect individual autonomy, to a contemporary conception in which rights are viewed as means to the achievement of more fundamental moral interests. Hasnas traces the historical development of these differing conceptions, identifies the essential characteristics of each, and argues for the superiority of the classical conception, since the contemporary conception of rights does not serve to restrain state power.

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———, **"Back to the Future: From Critical Legal Studies Forward to Legal Realism, Or How Not to Miss the Point of the Indeterminacy Argument,"** *Duke Law Journal* 45, no. 1 (1995): 84–132. Legal realists and the Critical Legal Studies movement (the "Crits") argue that Anglo-American law is indeterminate, that is, that the rules of law do not compel judges to decide cases one way rather than another. The judge, therefore has virtually unlimited discretion when deciding a case, so that law is employed as an exploitative weapon by the economically and politically powerful. Thus, it should be used as a weapon to counter this, in favor of egalitarianism. But, Hasnas counters, even if law is indeed indistinguishable from politics, then market forces should be used to combat such oppression since, as public-choice-type inquiry shows, political action is relatively inefficacious in countering political oppression caused by politically dominant groups.

Holzer, Henry Mark, "Contradictions Will Out: Animal Rights vs. Animal Sacrifice in the Supreme Court," *Animal Law* 1 (1995): 79. Ayn Rand's former lawyer (and apparently only semi-libertarian, given his apparent pro-animal-rights views) tries to point out what was wrong with the Supreme Court's decision holding that freedom of religion guarantees protected Santeria worshipers' right to religious sacrifice of animals. Holzer maintains that if animals can be legally "murdered" (!) (e.g., boiling lobsters alive to eat them), then "how can the Constitution, which protects the free exercise of religion, prohibit the killing of animals for religious purposes?" Advocates laws to prohibit the "murder" of animals, so that the Court will be less likely to favor the right to religious sacrifice of animals.

Kmiec, Douglas W., "Liberty Misconceived: Hayek's Incomplete Relationship Between Natural and Customary Law," *American Journal of Jurisprudence* 40 (1995): 209. Hayek distinguished between planned or imposed order and "that which arises spontaneously from within." In general, he favors customary law over legislation, giving legislation only a supporting role of correcting legislation. Such views of customary and common law and spontaneous order are congenial to the natural-law tradition, "[b]ut Hayek's understanding of liberty is misconceived insofar as it is built on an incomplete relationship between natural and customary law. To complete the relationship, individual liberty and the corresponding immunity from state directive must be reconciled with the social inclination of human nature to live in society." Somewhat confused and nonlibertarian article.

Kopel, David B., "It Isn't About Duck Hunting: The British Origin of the Right to Arms," *Michigan Law Review* 93 (1995):

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1333–62 (review of Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* [Cambridge, Mass.: Harvard University Press, 1994]). Assesses Malcolm's radical thesis that before 1689 there was no right to bear arms. When the 1689 Convention Parliament decided to guarantee a right to arms, the Convention chose, for political-tactical benefit, to pretend that it was reaffirming an ancient right to arms.

Larson, Jane E., "Free Markets Deep in the Heart of Texas," *Georgetown Law Journal* 84, no. 2 (1995): 179–258. Contends that Houston, Texas, typically cited as an example of a successful non-zoned city, is actually not a good example of a free market in land use because, although it has no official zoning, it has a range of other governmental land-use regulations. Housing subdivisions (*colonias*) in the unincorporated areas of the Texas counties that border Mexico provide a better example. Not a libertarian, Larson concludes that the *colonias*, "products of a regime that allocates land uses according to a market rather than a regulatory logic," provide "deplorable," "shantytown"-like housing and environmental conditions, and proposes a land-use policy for the *colonias*.

Lester, Jan, "Popper's Epistemology versus Popper's Politics: A Libertarian Viewpoint," *Journal of Social and Evolutionary Systems* 18 (1995): 87–93. Anarcho-capitalistic libertarianism, rather than socialism and state experimentation, are consistent with Karl Popper's epistemology. Illustrates the analogies between Popper's epistemology and methodology and libertarian principles, and their incompatibility with Popper's democratic liberalism. Suggests possible reasons why Popper does not see that libertarianism is the better social application of his philosophy than is socialism.

Lieber, Benjamin, and Patrick Brown, Note, "On Supermajorities and the Constitution," *Georgetown Law Journal* 83 (July 1995): 2347. Non-libertarian article arguing that certain supermajority requirements, such as House rules requiring a supermajority to increase taxes, are unconstitutional and unwise, for various reasons. Even argues that a supermajority voting enacted by *constitutional amendment* would be "unconstitutional." [See Mcginnis, 1995, below.]

Machan, Tibor R., "Posner's Rortyite (Pragmatic) Jurisprudence," *American Journal of Jurisprudence* 40 (1995): 361–75. Advocates of natural law maintain that law is an institution that requires a moral foundation, while positivists maintain that law is a system of rules requiring merely its imposition by the will of those in power. The influence of Richard Rorty, an advocate of one type of skepticism (neo-pragmatism) underlying positivism, is unfortunately being felt among certain legal theorists, including Richard Posner, federal judge, legal scholar, and law

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professor. Posner's Rortyite skepticism and belief that natural-law jurisprudence is a failure leads him to advocate intuitionism, an untenable account of the nature of law. [See Rosen, 1995, below.]

———, **"Individualism versus Classical Liberal Political Economy,"** *Res Publica* 1, no. 1 (1995): 3–23. Collectivists from Marx to communitarians, and even some supporters of the free market, have charged that the classical-liberal order is unjustifiably individualistic, that it fosters licentiousness, libertinism, hedonism, and moral subjectivism. Individualism, however, has not had a full hearing. Machan argues that proponents of the virtues of classical liberalism can embrace classical individualism without losing these values. Classical individualism need not lead to amoralism and recklessness since it recognizes that individual behavior might be morally praiseworthy or blameworthy, although it holds that the individual has the right to choose which way to act.

———, **A Revision on the Doctrine of Disability of Mind,"** *Persona y Derecho* 33 (1995): 213–22. *Mens rea,* or "guilty mind," is typically required before regarding an agent as guilty of a criminal act. Fingarette/Hasse have proposed a test to determine when a disability of mind (DOM) relieves the actor of culpability. Machan provides some support for this theory in response to one of their critics', by making certain aspects of their DOM theory more explicit.

Marzulla, Nancie G., "State Private Property Rights Initiatives as a Response to 'Environmental Takings,'" *South Carolina Law Review* 46 (Summer 1995): 613. Marzulla, president and chief legal officer of Defenders of Property Rights, discusses the enormous growth in the environmental regulatory state, in particular the countless uncompensated "takings" of private property by way of environmental protection regulations. Neither the judiciary nor the federal executive or legislature have played a satisfactory role in protecting private-property rights against such uncompensated "environmental takings." Thus, individuals are turning, with increasing success, to state legislatures for protection in the form of property-rights bills. Marzulla denies that the right to property itself is "anti-environmentalist," and points out that property is a fundamental human right. [See Boudreaux, 1995, Clegg, 1995, and Epstein, 1995 (*Nollan* and *Dolan*), above.]

McConnell, Michael, "Originalism and the Desegregation Decisions," *Virginia Law Review* 81 (1995): 947. Challenges the scholarly consensus that *Brown v. Board of Education* cannot be squared with the original meaning of the Fourteenth Amendment. Response and reply: Michael J. Klarman, "*Brown*, Originalism, and Constitutional Theory: A Response to Professor

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McConnell," *Virginia Law Review* 81 (1995): 1881; and Michael W. McConnell, "The Originalist Justification for *Brown*: A Reply to Professor Klarman."

McGee, Robert W., "The Moral Case for Free Trade," *Journal of World Trade*, 29, no. 1 (February 1995): 69-76. Points out that whether a trade agreement is good or bad is almost always determined purely on utilitarian grounds. Argues that utilitarianism is an improper yardstick, and that the best yardstick to use is to determine whether anyone's rights are violated.

Mcginnis, John O., and Michael B. Rappaport, "The Constitutionality of Legislative Supermajority Requirements: A Defense," *Yale Law Journal* 105 (November 1995): 483. The House rule requiring a supermajority to increase tax rates is not unconstitutional, despite the contentions of several law professors who sent an Open Letter to Congressman Newt Gingrich. The House may enact a rule governing its internal operations so long as the rule does not violate another provision of the Constitution. Yet, there is no constitutional clause prohibiting such a supermajority rule. [See Lieber, 1995, above.]

Morriss, Andrew P., "'This State Will Soon Have Plenty of Laws'—lessons from One Hundred Years of Codification in Montana," *Montana Law Review* 56 (Summer 1995): 359. In 1895, Montana changed the state's law via codification, using legal reforms designed previously for New York and California. Montana's experience both with adopting the substance of other jurisdictions' laws and in adopting a top-down codification/legislation approach should be illuminating for liberalizing economies considering adopting or transplanting the substance of foreign western law, and suggests that they approach this with caution. Sketches the codification movement in the U.S. and Montana's adoption of various codes in 1895. Draws lessons from codification for future legal reform efforts. [See Ajani, 1995, above, and Watson, 1994, below.]

Ostas, Daniel T., and Burt A. Leete, "Economic Analysis of Law as a Guide to Post-Communist Legal Reforms: The Case of Hungarian Contract Law," *American Business Law Journal* 32 (1995): 355. Law and economics insights can be useful in emerging economies such as those of East-Central Europe. Economic analysis of the law is briefly explained and is used to critique Hungarian contract law as embodied in its civil code. Analogous provisions in various Western nations are also critiqued. The critiques are used to illustrate the power of economic analysis to guide the legal-reform process in emerging economies. Potential obstacles to implementing economic jurisprudence in the post-communist world are discussed. [See Thornton, 1995, and Kinsella, 1994 (Lithuania), below.]

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Provost, Sian E., Note, "Defense of a Rights-Based Approach to Identifying Coercion in Contract Law," *Texas Law Review* 73 (February 1995): 629. Objectivist/libertarian attack on the judicial expansion of the concept "coercion" in contract law to cover non-coercive concepts or situations like bargaining power or economic duress. Epistemological subjectivism is responsible for contaminating the concept and definition of coercion. Under an objective approach such as Ayn Rand's Objectivist theory of concepts, including concepts such as "bargaining power" in the concept of coercion is invalid. Thus, rendering contracts unenforceable for these false kinds of coercion is unjustified. Judges' subjectivism allows them to manipulate words to suit their true purposes, which is not a commitment to a particular definition of coercion, but the desire to redistribute wealth.

Rice, Charles E., and John P. Tuskey, "The Legality and Morality of Using Deadly Force to Protect Unborn Children from Abortionists," *Regent University Law Review* 5 (Spring 1995): 83. Pro-lifers contend that "[i]t is possible to argue that under commonly applied criminal law principles, killing an abortionist as he arrives at the abortuary is a legally justified use of force in defending another. However, it is unlikely that any court would accept that argument" due to *Roe v. Wade*. "In any event, intentionally harming abortionists is not morally justified, and the law should not (and probably may not legitimately) sanction such clearly immoral conduct." Pro-lifers should rely on the stronger weapons of "speaking the truth," and prayer. [See Gordon, 1995, above.]

Rosen, Jeffrey, "Overcoming Posner" (review essay of Richard A. Posner, *Overcoming Law* [Cambridge, Mass.: Harvard University Press, 1995]), *Yale Law Journal* 105 (1995): 581. Review of Posner's latest tome by *The New Republic*'s legal-affairs editor. Remains unconvinced by Posner's argument for constitutional pragmatism as an overarching constitutional methodology. [See Machan, 1995 (Posner), above.]

Schoenblum, Jeffrey A., "Tax Fairness or Unfairness? A Consideration of the Philosophical Bases for Unequal Taxation of Individuals," *American Journal of Tax Policy* 12 (Fall 1995): 221. Prominent opponents of President Clinton's 1992 call for the "rich" to pay their "fair share" of taxes tend to object on economic or political grounds, for example the argument that increased taxes on the rich could affect economic growth or prolong the recession. Schoenblum challenges the notion that it is "fair" for richer taxpayers to pay more taxes, relatively or even absolutely, than others. Opposes proportional taxation and argues for absolutely equal taxation among wage earners regardless of the amount of income earned. [See Byrne, 1995, above.]

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Sebok, Anthony J., "Misunderstanding Positivism," *Michigan Law Review* 93 (June 1995): 2054. In America there has been an assumption that legal positivism is somehow inherently conservative and associated with the idea of "judicial restraint." Sebok argues that this is due to particular historical circumstances under which only a narrow version of positivism was developed in America, and that positivism does not have to be conservative. Sets forth a historical account of the evolution of legal positivism in American jurisprudence, and reevaluates the relationship between classical positivism and formalism. [See Blackman, 1995, above.]

Shearmur, Jeremy, "The Individual: A Suitable Case for Privatization," *Policy* 11, no. 2 (Winter 1995): 31-35. Concerning a current controversy in Australia, argues that an individual should have a right to voluntary euthanasia.

———, "Epistemology and Human Nature in Popper's Political Theory: A Reply to Stokes," *Political Studies*, 43, no. 1 (March 1995): 124-30. Discusses the theme of human nature in Popper's political thought.

Siegan, Bernard H., "Separation of Powers and Economic Liberties," *Notre Dame Law Review* 70 (1995): 415. The major objective of the separation of powers is to preserve liberty and prevent oppression. The power of each branch is limited on the basis of its limited function, and each branch checks and balances the others. The U.S. Supreme Court has generally accomplished these two-fold purposes, with two major exceptions. First, the Court has strayed from its role as interpreter by imposing affirmative mandates on the legislative and executive branches. Second, recently, the Court has failed to protect economic liberty. The article discusses the latter problem from the perspective of a separatists constitution and explains the necessity and desirability of a change in judicial policy.

Sunstein, Cass R., "Legislative Foreword: Congress, Constitutional Moments, and the Cost-Benefit State," *Stanford Law Review* 48 (January 1996): 247–309. The election of the 104th Congress, together with its "Contract with America" and its "distinctive" approach to government, signals the dawning of a "constitutional moment" in which the role of government at all levels will be reexamined, including examining regulation to determine if the benefits justify the costs. Sunstein suggests that Congress should adopt an "Administrative Substance Act," building upon the recent learning about the performance of regulation and modeled after the Administrative Procedure Act. Calls for the enactment of a "substantive supermandate" requiring a general background rule of cost-benefit balancing for all federal regulation.

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Thornton, Judith, "Economic Reform and Economic Reality" [in "Symposium, Development of the Democratic Institutions and the Rule of Law in the Former Soviet Union], *John Marshall Law Review* 28 (Summer 1995): 847. Reform in Russia has not resulted in a full free-market system. Halfway transitions sometimes privatize the revenue of economic activity while leaving costs socialized. The solution is not more regulation, it is the elimination of government policies that create rents and corruption. Russia must also implement policies that provide a stable environment for free-market activity, financial stability, physical safety of citizens, and clear, enforceable property rights. [See Ostas, 1995, above, and Kinsella, 1994 (Lithuania), below.]

Weingast, Barry R., "The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development," *Journal of Law, Economics and Organization* 11 (April 1995): 1. Thriving markets require free markets and also a secure political foundation that limits the ability of the state to confiscate wealth. This requires a form of limited government under which states are credibly committed to honoring economic and political rights. Studies how limited government arose in the developed West, and focuses on the critical role of federalism for protecting markets in both England and America. Federalism proved fundamental to the economic rise of England in the 18th century, America thereafter, and also to the spectacular economic growth of China over the past 15 years.

Wellman, Christopher H., "A Defense of Secession and Political Self-Determination," *Philosophy and Public Affairs* 24, no. 2 (Spring 1995): 142–71. Addresses the right of secession from a liberal standpoint. Concludes "that liberalism houses a robust right to secede grounded in political self-determination and that the principal characteristic required for this right is a group's ability and willingness to perform the functions that a government must." Respecting the right to self-determination can check the state's monopolistic control of areas. The "constant threat of secession can exert market pressures on existing states to treat minority groups with the decency they deserve." [See Brietzke, 1995, above, and Gauthier, 1994, below; also Robert W. McGee, "The Theory of Secession and Emerging Democracies: A Constitutional Solution," *Stanford Journal of International Law* 28 (1992): 451.]

———, "On Conflicts between Rights," *Law and Philosophy* 14, no. 3–4 (1995): 271–95. "Specificationists" hold that rights are absolute but not universally general: rights hold absolutely except in certain, enumerated cases. Prima facie theorists claim that rights are universal in generality but lack absoluteness. When rights apparently conflict, the specificationist theory best explains and resolves the conflict. Possessing a right against another entails a type of advantage over this party, and the greater

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the precision with which one can specify the nature of this advantage, the better one understands the right.

Wonnell, Christopher T., "Market Causes of Constitutional Values," *Case Western Reserve Law Review* 45 (Winter 1995): 399. Some argue that a free market is supported by the Constitution and also supports personal liberties protected in the Constitution, while others maintain that capitalism is a threat to constitutional values. Wonnell explores another issue, whether the existence of our free-market institutions causes us to embrace certain constitutional values, such as racial and religious tolerance, personal privacy, and freedoms of speech and press. Discusses whether market incentives have systematic effects on the values of market actors, which are then reflected in constitutionally enshrined values.

1994 Articles (Titles Only)

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Alstyne, William Van, "The Second Amendment and the Personal Right to Arms," *Duke Law Journal* 43 (1994): 1236.

Amar, Akhil Reed, "Fourth Amendment First Principles," *Harvard Law Review* 107 (1994): 757. [See Amar and Lettow, 1995, above.]

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Cooter, Robert D., "Decentralized Law for a Complex Economy" [in "Economic Symposium: F.A. Hayek and Contempo-

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Gauthier, David, "Breaking Up: An Essay on Secession," *Canadian Journal of Philosophy* 24, no. 3 (1994): 357–72. [See Brietzke, 1995, and Wellman, 1995, above.]

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